UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

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IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION	:	MDL No. 2804
	:	Case No. 1:17-MD-2804
THIS DOCUMENT RELATES TO ALL CASES	:	Hon. Dan A. Polster

- - -

Friday, December 21, 2018

HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

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Videotaped deposition of PETER RATYCZ, held at the offices of Cavitch, Familo & Durkin, 1300 East Ninth Street, Cleveland, Ohio, commencing at 8:59 a.m., on the above date, before Carol A. Kirk, Registered Merit Reporter and Notary Public.

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VIDEOTAPED DEPOSITION OF PETER RATYCZ

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P R O C E E D I N G S

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THE VIDEOGRAPHER: Good morning. We are now on the record. My name is Darnell Brown, and I am the videographer with Golkow Litigation Services. Today's date is December 21, 2018, and the time is 8:59 a.m.

This video deposition is being held in Cleveland, Ohio, in the matter of National Prescription Opioid Litigation for the United States District Court for the Northern District of Ohio. The deponent is Peter Ratycz.

Counsel, please identify yourselves for the record.

MR. HAWKINS: Gabe Hawkins, Ned Mulligan, for Plaintiff.

MR. JOHNSON: Tim Johnson for Discount Drug Mart.

MS. LUND: Juli Ann Lund from Williams & Connolly on behalf of Cardinal Health.

MR. PAPPALARDO: Giuseppe Pappalardo from Tucker Ellis on behalf of Johnson & Johnson and Janssen Pharmaceuticals.

MR. SCHOCK: Andrew Schock from Jackson Kelly for AmerisourceBergen Drug Corporation.

THE VIDEOGRAPHER: Counsel on the phone.

MS. LANGSTON: Nicole Langston from Jones Day on behalf of Walmart.

MR. MANNIX: On the phone, Paul Mannix with Marcus & Shapira on behalf of HBC Services.

MR. NEIHAUS: Ross Neihaus from Arnold & Porter on behalf of the Endo Defendants.

THE VIDEOGRAPHER: The court reporter is Carol Kirk who will now swear in the witness.

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PETER RATYCZ

being by me first duly sworn, as hereinafter certified, deposes and says as follows:

CROSS-EXAMINATION

BY MR. HAWKINS:

Q. Good morning, Mr. Ratycz.

A. Good morning.

Q. My name is Gabriel Hawkins. I'm an attorney for Plaintiffs in this litigation. You understand there's currently litigation pending against various Plaintiffs, usually municipal entities, and Discount Drug Mart, or DDM, is one of the Defendants in that litigation, correct?

A. Yes, I do.

Q. And you understand that you're here as a deponent on behalf of DDM in this litigation, correct?

A. Yes.

Q. Thank you.

What did you do to prepare for today's deposition?

A. I had a deposition preparation session with our attorney Tim and probably looked at some policies and procedures, probably about two hours worth of preparation.

Q. Okay. And did you do anything --

well, we'll talk about that two hours in a moment.

A. Okay.

Q. But outside that two hours, did you did anything in relationship to this litigation in preparation or anything related to this litigation?

A. No, no.

Q. So it's fair to say that two hours is basically your exclusive preparation?

A. Yeah.

Q. Okay. I'm going to break this rule more than you will, but one of the things that's very important to do is, if I'm talking, you can't talk, and if you're talking, I can't talk, because she has to write down everything we say. I talk fast and it gets really hard for her.

You referenced some documents that you reviewed. Do you recall what documents you reviewed?

A. I reviewed our control substance quality assurance program, reviewed some -- some other ancillary documents related to just --

some of our reporting based on our SOMS. I looked at some past e-mails that came from the DEA, possibly, or we may have sent, so ...

Q. Okay. Did you review any deposition testimony?

A. Yes, I did.

Q. What deposition testimony did you review?

A. Jason Briscoe's.

And I might add, too, if I may, going back, there was probably -- two hours of that preparation was reading that testimony. However, before that, it was probably more like seven or eight hours preparation.

Q. Okay.

A. I just wanted to make that clear.

Q. So I'm a little confused and I'm sure it's me.

A. Sure, sure.

Q. So there were two hours reading Mr. Briscoe's deposition and before that, you had seven or eight hours of preparation with attorneys and whatnot?

A. And we had -- yeah. Yeah, that

would be fair.

Q. Okay. And did you read any other depositions, for instance, Mr. McConnell --

A. No, I did not.

Q. Okay.

MR. JOHNSON: Let him get his question all the way out.

A. Okay. Sorry.

Q. That's all right. I will break the rule more than you will.

MR. JOHNSON: I'll referee.

MR. HAWKINS: Thank you.

BY MR. HAWKINS:

Q. Did you review anything from litigation experts, any reports or anything like that?

A. No, I did not.

Q. How about any databases? Did you go into DDM's databases and look for documents or anything of that nature?

A. No, I did not.

Q. How about court documents? There was a complaint filed in this complaint -- this case. Did you review that?

A. Yes, I did.
Q. Did you read the entire complaint?
A. Most of it, yes.
Q. Okay. It's a fairly long document, correct?
A. Correct.
Q. Okay. And we talked about that seven- to eight-hour period. Did that include -- did you do that within that seven- to eight-hour period?
A. That would be additional.
Q. Okay. So was that before or after the seven- to eight-hour review?
A. That would be after.
Q. Okay. How about any publications?
A. Can you --
Q. Sure. I mean, there are various industry publications, a lot of which relating to opioids and whatnot. Did you review anything of that nature in preparation?
A. For this?
Q. Yes.
A. No.
Q. Okay. And you kind of anticipated

my next question. You started to say -- you're in the industry, right?

A. Correct.

Q. So you probably come across a lot of such articles just in the regular course of your business. Yes?

A. Yes.

Q. And you review them in the regular course of your business, correct?

A. Yes.

Q. Okay. Is that -- well, we'll get into that, but that's part of your job duties and whatnot?

A. Yes.

Q. How about your own files? Did you go through your own files or anything to look for material that might be related to today's deposition?

A. Not really.

Q. Did you -- do you have your own kind of file base or anything like that that you keep of important documents?

A. I have a file system, yes, probably just like everybody else, so ...

Q. How large is that file system? I mean, can you estimate how many documents are in it?

A. I would probably say -- that's a tough -- I mean, I would probably have about 100 files. And then within those files are other files and it just keeps layering so ...

Q. I see. At any time have you reviewed those files in response for document production in this litigation?

A. No.

Q. Do you know if anyone went through those files to look for material that might be responsive to discovery requests in this litigation?

A. I believe somebody did, yeah.

Q. Your files?

A. Yes.

Q. Okay.

MR. JOHNSON: I don't think we established whether we're talking about paper or electronic.

MR. HAWKINS: That was going to be -- I'm asking general and then I --

MR. JOHNSON: Okay.

MR. HAWKINS: Thank you. And that's a fair question.

BY MR. HAWKINS:

Q. Now, when you said -- you gave a number of documents. So I kind of assumed you were talking about paper, correct?

A. Correct.

Q. Okay. And then you have electronic -- an electronic database as well, correct?

A. Yes.

Q. Okay. So we talked about someone going through and looking for responsive documents. Do you know how that was done?

A. I mean, we have a file system, okay, in our department, so somebody could have -- are you talking about just providing information for the -- this for case or just for my deposition or -- I'm just curious.

Q. For this case.

A. Okay. Yes, they would have gone through the file system that we have at work, okay?

Q. When you say "they," do you mean the electronic documents, the physical documents or both?

A. It would have been both, yeah.

Q. Okay. So your physical paper file went there as well?

A. Yeah. Yes.

Q. And to your knowledge, that was part of what was reviewed for document prep?

A. Correct.

Q. Thank you. All right. And you indicated that there was a seven- to eight-hour session with your attorney. And to be clear, I'm not asking you anything that your attorneys told you or even what you told your attorneys, but which attorneys were present?

A. Tim Johnson.

Q. Anyone else?

A. No.

Q. Anyone besides attorneys present during this time?

A. Yes.

Q. Who?

A. Tom McConnell and Jason Briscoe,

and probably Keith Miller. Yes. And that wasn't for the full duration. That was just initially when we were talking about the deposition process and what to expect, and then we broke off into individual groups.

Q. Okay. And when you broke off into individual groups, then it was just you and Mr. Johnson?

A. And Mr. Briscoe.

Q. And Mr. Briscoe?

A. For a portion of time, yeah.

Q. Okay. How long of a time was Mr. Briscoe in the room with you?

A. I don't remember. He was in and out.

Q. Now, you understand that there are numerous other Defendants in this litigation, correct?

A. Yes, I do.

Q. And did you talk to any attorneys for those Defendants before today's deposition?

A. No, I didn't.

Q. You're in the industry. You probably talk to other companies that do similar

things as you, yes? I mean, people who work for other companies, correct?

A. Yes, I do.

Q. Do you ever talk to them about this case?

A. No.

Q. Fair to say you've never had any conversations with them about this litigation?

A. Correct.

Q. Apart from your wife or anyone related to you, did you have any conversations about this litigation with anyone else?

A. No.

Q. Would you agree with me that this litigation is pretty big news within the pharmaceutical industry? I mean, this is a -- kind of a once in a lifetime event. No?

MR. JOHNSON: Objection.

A. It's very big, yes.

Q. Fair to say a lot of people in the industry have heard about it?

A. Yes.

Q. Is there a reason why you haven't talked to anyone about this litigation, I mean

given that it's kind of big news and whatnot?

A. It's not unusual that when I talk to other people in the industry -- I don't talk to them that frequently. Typically when I do talk to them, I see them at trade shows. So that might be a couple of times a year. And we may be talking about other items, so ...

Q. What I'm getting at, is it a conscious decision on your part not to talk about this litigation?

A. I wouldn't say it's conscious. If it were to come up in -- you know, potentially we could talk about it, but we're -- sometimes we're just talking about other items that might be, you know, fighting PBMs or doing this and that, so -- any other headwinds that we may be facing, so ...

Q. Sure. And to be clear, I'm just asking the reason.

A. Yeah. Understood.

Q. My colleague is now going to hand you what will be marked as Plaintiff's Exhibit 1.

- - -

(DDM-Ratycz Exhibit 1 marked.)

- - -

MR. HAWKINS: I'll apologize. Maybe this is standard practice here, but apparently the exhibits were printed double-sided. I think that's not how I would prefer to go about things, but that's what we're working with.

MR. JOHNSON: Okay.

BY MR. HAWKINS:

Q. Now, there will be some instances where I hand you an exhibit. I'm going to say, "You might want to keep this one kind of nearby." This isn't one of those examples, but some, you're going to want to keep by because we might want to come back to.

Do you recognize this document, sir?

A. Yes, I do.

Q. When's the first time that you saw this document or one like it?

A. Probably about a few months ago.

Q. And what was the circumstance in which you saw it?

A. It was e-mailed to me.
Q. Okay. And how did you find out that you'd be deposed in this case?
A. I found out from Tom McConnell.
Q. Okay. And what was said to you?
A. Just said that I would be deposed on this case, basically that.
Q. Was that before you received this document?
A. I don't remember.
Q. Did Mr. McConnell say anything other than, "You're going to be deposed?" Did he give you any advice or --
A. No. He just said that we'll be talking to Tim and he'll be following up and we'll be doing deposition preparation and, you know, that was it.
Q. What company do you currently work for?
A. Discount Drug Mart.
Q. Okay. And we can refer to that as DDM, correct?
A. Absolutely.
Q. What is your current job title?

A. Senior vice president of pharmacy.

Q. To the best of your ability, can you give me a thorough description of your job duties and responsibilities.

A. Absolutely. Pretty much oversee many of the aspects of pharmacy from an operations perspective, financial side of it, PBM management, procurement, okay, which would include the pharmacy warehouse, do some compliance, and also I'm involved heavily in our specialty pharmacy operation.

Q. All right. You referenced "PBM management." What is that?

A. That's just basically third-party contracting. Network access basically.

Q. And you said you do a lot of work with your specialty pharmacy?

A. Correct.

Q. What is that?

A. That's just -- it's a wholly-owned subsidiary of Discount Drug Mart. It's Gentry Health Services. And so I'm involved in that and trying to grow that business.

Q. And what are your -- strike that.

Is there anything you do with respect to that involving preventing diversions or government compliance?

A. No, I don't.

Q. Now, you went through a fairly long litany of your job responsibilities. Which of those responsibilities have relationships to controlled substance, at least in terms of preventing diversions or government compliance?

A. I mean, I would probably -- can you repeat that question?

Q. Sure. There's probably a better way to go about this.

You understand what "diversion" is, correct?

A. Yes, I do.

Q. And what is your understanding -- do you understand what "government compliance" is?

A. Yes.

Q. Okay. Is that part of your job responsibility?

A. A part of it is, yes.

Q. And what is your role with it and

how do you fulfill that responsibility?

A. So the way we were set up -- and we are a smaller organization, so obviously different individuals within the company are going to wear many hats, and so from that perspective, compliance, typically we would sometimes divide up. I might be -- I spend a lot of time working on HIPAA, okay, but I had a different individual -- we would split duties with the State Board of Pharmacy and the DEA, okay.

Moving forward, somebody else did fraud, waste and abuse, for example. I would have a hand on that, but I wouldn't be necessarily doing fraud, waste and abuse. It's just an example, okay?

Now, fast forward to today, we've got a director of compliance. So we have somebody trying to funnel in and put it all under one silo.

Q. Okay. There's a lot to digest there. First of all, who's the director of compliance that you just referenced?

A. Presently that's Joe Muha.

Q. Okay. And how long has he held that position?

A. Joe has been with us for probably a year and a half.

Q. Okay. And who held that -- I assume you held that before him?

A. Well, it wasn't -- we didn't -- that position wasn't a compliance position, but it was basically -- yeah, most of that at that particular point would funnel, but through the years sometimes it was carved out.

Q. Okay. And when you say "carved out," what do you mean by that?

A. Well, again, we -- I might be -- I solely did HIPAA, okay, so nobody else did that. Somebody else was in charge of fraud, waste and abuse. With DEA, we would typically split those responsibilities, and as well as working with the State Board of Pharmacy.

Q. All right. So someone else did fraud, waste and abuse?

A. Correct.

Q. Who did that?

A. Fraud, waste and abuse was Tom

Nameth.

Q. And how long was Tom -- is he still involved in that capacity?

A. No. He's retired. He retired, I would say, like 2014, maybe '15. I don't -- I don't recall when specifically, but it's one of those two.

Q. And did Mr. Briscoe replace him?

A. Yes. Mr. Briscoe worked -- replaced him, worked about a year, probably, before that in training in preparation for Tom's departure.

Q. And then you referenced as a second category DEA, as a category, and you said several people, I think, were involved in with that?

A. I think initially, prior to Jason, I think Tom and I both worked with the DEA.

Q. Okay. Did you have a specific delineation of duties, or did you both wear the same hat, so to speak?

A. So to speak. I mean, obviously everything rose to me. So if you want to put it that way, that would be my responsibility, I

guess, but we both had our hands in the pot.

Q. Okay. And what were your responsibilities? What did you do in terms of DEA compliance and whatnot?

A. Well, just tried to make sure that we had, for example, a controlled substance quality assurance program, make sure that we had a program -- make sure that we were effectively using 106s to report any diversion or theft that might be occurring that we encountered that was known.

Working with the State Board of Pharmacy. We, again, split those duties with regard to working with the agent if we had a situation of pilferage or something along those -- of that nature, so ...

Q. You referenced 106s. What is a "106"?

A. It's if you're reporting a theft or a known loss.

Q. Okay. And to whom did you report it? Who does 106 --

A. The 106 would be reported by the store pharmacist, and they would involve the

store pharmacy supervisor. And often we would be aware of an issue. So if somebody was a few tablets short on their monthly count or daily count, on a back count, and they noticed that they're a few pills short, they would go ahead and submit that.

Q. Submit it to whom, is my question?

A. I'm sorry. The DEA. And they would notify the State Board of Pharmacy as well.

Q. Thank you. Now, we talked about Mr. Briscoe, Mr. Muha and Mr. Nameth. Does anyone else share these roles with you, that you can think of?

A. No.

Q. Is it Ms. Strang? Is that -- am I pronouncing her name correct?

A. Yeah.

Q. Does she do this role at all or is -- it's kind of on a lower tier, so to speak?

A. Lower tier and she's predominantly our buyer.

Q. Okay. You say your "buyer." What does that mean?

A. She procures. She works with the pharmaceutical vendors, and so she is going to determine what we're going to -- what generics we're going to stock from a utilization perspective and works with the vendors in bringing that in.

She works on making sure that it's being pulled and then being sent out to the stores. Works on the schedule, delivery schedules, and any other hiccups that might occur, you know, from a distribution of any medication from our warehouse.

Q. Now, I've heard on more than one occasion that everyone at DDM is responsible for preventing diversions.

Have you ever heard that before?

A. I would say that's true.

Q. Okay. I've heard it from other witnesses.

Who at DDM would you say, "and that's kind of mostly their responsibility"? I mean, is it funneled to one person saying, you know, this is, you know, things related to diversion, this is certainly the person you

would talk to is most within their job focus and responsibility?

A. I guess it depends on how we define, you know, diversion, but I mean ultimately that would either be myself -- it would either float up to me. Typically, because we are a -- we are a smaller organization, it's very easy that -- and most people do -- they would include me and Jason. So there's not multi layering that's going on. So, you know, we're sending it to one person, it goes to another person and finally it gets to me. Often it's me and Jason being aware of a situation.

Q. Okay. So that you and Jason would be the -- fair to say, primarily responsible for preventing diversion at DDM?

A. I would say that's a fair statement.

Q. Thank you. And earlier you wanted to qualify saying, "depends on how you define diversion." Can you explain that a little a bit?

A. No, I was just meaning where the diversion -- I mean, if that's -- for example,

pilferage -- I mean normally we would involve -- we're always going to involve loss prevention, too, I guess is where I was going with that, so ...

Q. Can you explain that just a little bit.

A. Well, yeah, so if we have a case where we've got a short in a store and let's say it's ten tablets and we're aware of it, then we're obviously going to a involve the pharmacy supervisor and then we're going to involve loss prevention and an investigation is going to take place. That's assuming that we can't explain why we're ten pills off.

Q. Okay. And loss prevention is a separate category within DDM; is that accurate?

A. Yeah. Yes.

Q. Who's responsible -- who's in charge of loss prevention?

A. That would be Buddy Graf.

Q. Okay. And do they have a -- I mean -- strike that.

Who's your immediate supervisor?

A. My immediate supervisor is Doug

Boodjeh.

Q. Okay. And who is Mr. Boodjeh, and I mean in terms of title and whatnot?

A. He's the chief operating officer for Discount Drug Mart.

Q. And he's worked there for some time?

A. Yes.

Q. How often do you have interaction with Mr. Boodjeh in terms of compliance and diversion issues?

A. From a compliance and diversion -- I mean, diversion, I mean, he may be involved if it's something that's significant. I would not say that he's made aware of a situation that we're investigating somebody at a store because we think that we have a technician that might be pilfering and -- I mean, I don't think he's involved at that level. If there was something significant, he was -- he would be.

Q. Can you give me an example of something what you deem as significant that he would be involved in with respect to that?

A. I mean, again, typically, with --

if I am aware of a situation as such, I normally would not include Doug because I'd be working with loss prevention and I'd be working with my team, which would be Jason and usually the pharmacy supervisor.

So normally I would not bring -- now, if it was -- and I don't recall having a significant issue of pilferage where we needed to bring him in --

Q. Okay. And --

A. -- into the circle as far as being -- now, it doesn't mean somebody can't copy him and may copy him. But normally, I mean, I think there was enough trust in the system where we would handle that.

Q. All right. And I'll make this easy for you. What I'm -- you indicated earlier that there is a point where he might be involved in this, and I'm just trying to figure out where that point is. So can -- I'll ask a more open-ended question. Can you tell me what are the instances he gets involved in these type of issues?

A. I think he just is made aware of

it from an exterior standpoint. So, you know, normally if there's any losses that we're having, he's not being copied. He's not being made aware of them, that I can tell.

Now, I can tell you if it was something that was significant -- and I don't recall anything major of involving him -- he would certainly probably be made aware of.

Q. Okay. And we'll get into the specific documents later in the deposition, but there are numerous, or at least several, DDM policies and procedures and protocols with -- as it relates to loss prevention and control -- sorry, strike that.

You understand what I'm referring to?

A. No, I'm not.

Q. Okay. DDM has policies concerning diversions and to try to prevent them, correct?

A. Yes.

Q. Okay. And some of those policies were implemented at various periods of time. Are you with me so far?

A. Yes.

Q. Would he have been involved in those in terms of overseeing the policies or being made aware of the change?

A. Doug?

Q. Yes?

A. No.

Q. So basically it would get to you and stop?

A. Yeah. Yes.

Q. How many people do you directly supervisor?

A. My direct reports are Jason, Jill. However, Jill probably spends more time with Jason, as far as meeting with vendors and stuff like that. So there's a split there, but she reports to me. I have Joe Muha, okay. And then we have a director of clinical operations, and she reports to me. And then the -- we have three pharmacy supervisors in the field, and all three would report to me as well.

Q. All right. Describe, what is "clinical"?

A. Medication therapy management. So it's providing a service and trying to be paid

for it from a pharmacy standpoint. She's in charge of our immunization program. That type of stuff.

Q. All right. And then after clinical, you mentioned that you have three pharmacy supervisors in the field. Can you tell me what they do?

A. Yes. They oversee -- each pharmacy supervisor has a district or a zone, and they have a responsibility. For example, they may have 20 stores. So they're responsible for overseeing the operation of those stores or helping -- it could be recruitment, personnel issues within the store relayed from a pharmacy tech or a pharmacist, any HR issues that may rise would be funneled through them.

It wouldn't be unusual if somebody had a -- you know, said "Hey, I'm short ten pills" or "We have an issue." They're usually going to be the first ones that are going to be involved at that particular point. Again, typically it would be operations and the pharmacy supervisor would be notified by the pharmacist.

There could be a situation where they feel just comfortable talking to the supervisor, and then the supervisor would escalate that. They'd be responsible for implementing programs, making sure that any -- if our stores were executing programs or initiatives that we had in place, that they were properly doing that.

In addition, we had a pharmacy inspection and a form, and they were responsible for doing an annual inspection. And so that would basically consist of them going out to the stores. And they would tackle, you know, HIPAA.

There was some items on there with regard to controlled substances, verifying counts, making sure that counts were being done, verifying security of the pharmacy, okay, and then verifying, you know, cleanliness of the pharmacy. Making sure that training was up to date, and so on and so forth.

Q. Thank you.

So several things that you just mentioned in that list kind of touch on diversions, don't they?

A. Yes.

Q. For instance, fraud, theft, that would be kind of a diversion issue?

A. Yes.

Q. And it's -- so fair to say they're kind of the first rung on the ladder that would be triggered with that, correct?

A. Could be.

Q. When would it not be?

A. Again, it's a small organization, so where I sit, as a senior vice president, I could probably -- I can tell you that I've hired many of our pharmacists. I know them by first and last name. I could probably tell you the kids' names for many of them. So we're a very personal group.

So there could be a comfort level to go to me directly just because I may have hired them 15, 20 years ago, and -- or they may be going to Jason to that extent. There's another example there. So it typically would go to the supervisor, but it could come to us as well.

Q. Okay. And I'm not challenging

anything on this. I'm just trying to understand the structure.

A. Yes.

Q. So there's not really a chain of command issue with respect to that? I mean, in terms of, okay, we've got a theft, it's okay -- it's not a big deal to kind of skip that first rung in the ladder, so to speak?

A. Ultimately everybody is involved. So everybody is going to get brought in.

Q. Okay.

A. So if there is an e-mail that I get, it's not me solely handling that. So obviously I'm going to bring in loss prevention, the pharmacy supervisor, and I always copy Jason. Jason will always copy me as well.

Q. Okay. And we'll get more into the specifics of this, and I'm going to try to tangentally touch on it. But occasionally there are orders placed for controlled substances that are unusual and raise a red flag. Are you with me so far?

A. Yes.

Q. Okay. Do these three field

supervisors have any involvement and touch on those issues when that happens?

A. From the -- no. No, they would not. From the distribution center?

Q. Yeah, from the distribution center or as it relates to the pharmacy -- I mean, because there's -- it's kind of connected, correct?

A. Yes.

Q. Okay. And are they -- do they have any involvement on the pharmacy end of that?

MR. JOHNSON: Objection.

A. Can you repeat that question? I apologize.

Q. Sure. Sometimes when you have one of these orders, and we'll go into it more later, what DDM has done is they've called a physician, for instance, and said -- you know, to verify the order. Are you with me?

A. Yes.

Q. Okay. When those decisions are made, are -- do these three field supervisors, are they consulted with respect to those

decisions?

A. In order to process a prescription?

Q. Yes.

A. That would be very rare.

Q. Okay. To your knowledge, has it ever happened?

A. It could happen.

Q. In what circumstance?

A. And that could happen from a situation where you have a new grad pharmacist who's unsure of what to do with regard to a possible prescription, should I fill it, should I not, I don't feel comfortable, that type of thing. So there could be some guidance in coaching that -- that pharmacist.

Q. Have you ever been involved in a decision to terminate someone at DDM?

A. Unfortunately, yes.

Q. How many times?

A. That's a good question. I couldn't give you an accurate answer to that. I would say five, six, perhaps more.

Q. Okay. And how long have you

worked at DDM?

A. I've worked there since '89.

Q. Did any of those decisions --

A. In this position -- I'm sorry -- where I would terminate a pharmacist probably from 1999 on.

Q. Thank you for that clarification. And we'll get more into the specifics of your career.

Did any of those circumstances involve controlled substance at all in any way, shape, or form?

A. Yes.

Q. How many?

A. Again, I don't know. I would probably say there were a few of them, two, or three, maybe more.

Q. When's the last time you can remember this happening?

A. A termination or a termination involving a controlled substance?

Q. The latter.

A. I don't think it's happened in a few years.

Q. Okay. So four years ago maybe?
A. Maybe.
Q. Okay. Can you recall the instance?
A. No, I don't.
Q. Can you recall what the relationship was with the controlled substance and what caused the termination as it related to controlled substance?
A. Typically it's somebody who is -- would be the ones -- that I would recall, would be somebody that was taking the medication and using it.
Q. Okay.
A. So ...
Q. How often has that happened in the course of your career?
A. Not very often, fortunately.
Q. How often is "not very often"?
A. Again, I mean, I would think -- off the top of my head I probably -- there's probably about two or three instances in that span from 1999 until now. And, again, I -- that I was involved with at least.

Q. All right. And we've talked that, you know, DDM is a smaller company and you kind -- everyone knows each other. Do you know what level these employees are?

A. I thought we were talking about pharmacists.

Q. Yeah, it's --

A. Yes.

Q. Okay. They're pharmacists, they're pharmacists assistants, I mean -- correct? Are they head pharmacists? Are they --

MR. JOHNSON: I object. I think your original question was just about pharmacists, and I don't think you have expanded it since then, so ...

MR. HAWKINS: I'm just asking him to clarify who he's referring to.

MR. JOHNSON: Yeah. Okay.

A. It could be a head pharmacist -- we call them chief pharmacists -- or it could be a staff pharmacist or it could be a floater.

Q. Okay. So it can -- the terminations we talked about could include all

three of those categories?

A. Yes.

Q. Thank you. Do you know if you've ever given anyone -- I'm sorry. Strike that. Let me lay a foundation.

Are you in charge of giving people reviews at DDM?

A. Yes. I'm involved in that process.

Q. What is your involvement?

A. So I will obviously review the individuals that report to me. The individuals that -- for example, the pharmacy supervisors would be responsible for helping to review the store pharmacist. There may be times, based on my role, I didn't get too involved in that, just too many pharmacists. You know, from that perspective we had somebody doing that.

So I would oversee Jill, Jason, Joe, and Michelle in terms of reviews with those individuals.

Q. Jill and Jason, they're the only two that kind of touch on diversion type issues, correct?

A. Yes.
Q. Okay. Have you ever given Jill or Jason a negative review or a reprimand or anything of that nature as it relates to controlled substances?
A. No, I have not.
Q. What year did you graduate high school?
A. 1982.
Q. And from where did you graduate?
A. Lorain Admiral King.
Q. And is that in Ohio?
A. Yes, it is. It's in Lorain, Ohio.
Q. I'm sorry. I'm not from the area. And you went on to attend college from there?
A. Yes. University of Toledo.
Q. What degree did you obtain?
A. A pharmacy degree.
Q. When?
A. '88.
Q. Did you have a job while in college?
A. I'm sorry?

Q. Did you have -- did you work while you were in college?
A. Yes, I did.
Q. How did you work?
A. I worked as a pharmacy intern in a hospital.
Q. What hospital?
A. Mercy Hospital in Toledo, which has since closed.
Q. And what were your responsibilities when you were doing that?
A. Just fill -- we had unit dose trays that would go up to the hospital beds, so I was responsible for filling those. Inventory of controlled substances, checking in some orders, doing IV add mixtures, helping with chemos, preparations, things along that line.
Q. Okay. You say "inventory of controlled substances." Is it possible for you to tell me how that works kind of at the pharmacy level?
A. I'm going back a ways. Are you talking about that specific --
MR. JOHNSON: Are you talking

about Mercy Hospital?

Q. I'm talk -- well, I'll break it down. I mean, I'm -- let's start with Mercy Hospital. How did that work?

A. What would happen would be, there would be -- and, again, I thought it was monthly at that time. I might be wrong. I would go in -- and again, I wasn't the person doing the inventory, but as part of the pharmacy internship experience, I would go in with another individual, and we would -- he would count, and I would count, and then he'd do the other side, and I would do the other side, and we would report a discrepancy, if there was any.

Q. Okay. And that was done monthly?

A. I thought so, yeah. But it could have been weekly or something. But, again, based on when -- I didn't work there full time, so that might have been -- you know, it might have been just when I was there, I was able to do it. And that wasn't one of my responsibilities either.

Q. Does this happen at DDM's pharmacies in the present day, like now, so to

speak?

A. Are you talking about in the pharmacies or in the warehouse?

Q. The pharmacies.

A. Yes.

Q. How long has it occurred?

A. Excuse me. We have a -- we do cycle counts on our medications, so -- on all our medications because our perpetual inventory is tied to that, so even if it's a non-controlled substance, we want to make sure that the inventory is accurate.

What we've done is we've cycled in our controlled substances and our Schedule IIs so that they would hit on a threshold of -- I'm not sure about controls III through IV, but I know of Schedule IIs. They would be hit once in a 90-day period where we would be asking them to randomly verify.

So, in other words, every day they'll get 25, 30 drugs that they have to verify the count. If they do not verify the count, an e-mail is sent to the pharmacy supervisor notifying them. So that's how we get

the stores to make sure that they're executing on that, because obviously if these e-mails are going out and they're not doing it, our inventory is going to be wrong.

In addition to that, we do a monthly C-II count, so -- and in addition to that, when we're processing a prescription for a Schedule II, what we would do -- and -- is do a back count on that item as well. So if there's -- if your inventory says that you should be at 120, you would -- and you just dispensed, you know -- let's say you were at 150 and you dispensed 30, now your inventory says you should be at 120, the pharmacist should verify that 120 is the what you have.

Q. And how long has DDM had this protocol?

A. We've been -- it's been there a few years -- we've been refining it. Prior to that, we weren't doing cycle counts but we were doing monthly Schedule IIs. And actually those were pretty much daily anyways because we had a perpetual inventory book where if you went ahead and dispensed a medication of Schedule II, you

would go ahead and verify that count at that particular point.

Q. All right. So --

A. It was just mandatory that once a month they would send us a confirmation that a -- an inventory was done and note if there was any discrepancy.

Q. I want to make a mistake here and go ahead of myself. But one of the -- there have been thefts at DDM in the past, correct?

A. Unfortunately.

Q. Sure. And thefts of controlled substances specifically, correct?

A. Yes.

Q. And some of those thefts involved, at least over some period of time, drugs being taken, correct?

A. Correct.

Q. What I'm trying to understand is, wouldn't that have been caught in the inventory check? I mean, if there was an inventory check, you would think that those thefts wouldn't make it past the first inventory check?

A. I mean, there's going to be -- it

depends on -- for starters, I think any system, once somebody knows how it's being run, there's a potential for diversion within that -- within that system. And by that, I mean, so, you know, the -- somebody is verifying a count, they say it's 120. If there was diversion and I was the one diverting -- you know, responsible for that diversion, my initials at that time that there's a 120, even though there's less, okay, I've technically contributed to that problem.

So it's going to be hopefully the next pharmacist that fills a prescription is going to verify that, okay, we've got an issue here. If that's the case, then I know we can go back to the other pharmacist. If there's a situation where -- and, again, somebody doesn't do a back count because maybe they're busy, "Well, I'm going to do the back count later," there can be an issue where something can go on a couple times before it's caught. I think we've gotten much better at catching diversion now than maybe we did many, many moons ago.

Q. Okay. You say many, many moons. How many moons are --

A. I mean, I think, you know, certainly when I came on board, I mean, in '99, I mean, we were -- you know, what was expected at store level as a pharmacist has gotten better. There are more -- there's more responsibilities with regard to managing, you know, controlled substance inventory.

Q. Okay. And just to focus --

A. There's more awareness about it as well.

Q. And when did that awareness kind of blossom, in your opinion?

A. I think it started blossoming as, you know, the opiate issue became more and more relevant.

Q. Can you put an approximate year to that?

A. I would be making up a date, but I would suspect in the 2000- -- mid 2000s or so, probably.

Q. Okay. And I'm just trying to figure out how the process works as it relates -- I mean, so the two explanations -- I mean, you would think if you're counting each

pill, so to speak, and pills are gone, that's going to show up pretty quickly, right?

A. Correct.

Q. All right. So the two possibilities that I heard you tell me on how this could be get past us: Is one, if the person doing the counting is part of the diversion; and two, is if someone, kind of, for lazy, too busy, or whatever, just kind of skipped a process for a little bit.

Can you think of any other types of way that the inventory wouldn't catch that?

A. It potentially could be a situation where maybe a prescription gets filled, the count's verified, but what goes into the bottle, the patient gets shorted. So in that situation, instead of getting, you know, 50 -- 50 tablets, they end up with 45.

Q. Well, in that case you'd have a surplus --

A. No, because the inventory is correct, but what happens is, perhaps it could be a situation where somebody takes the five from the bottle and it's sold to the customer on

the premise that the customer or the patient is not going to count it.

Q. I understand.

A. That would be another opportunity, I think.

Q. Did you go on any postgraduate education after graduating college?

A. No, I did not.

Q. After graduating, where were you -- where were you employed?

A. I worked at Metro Hospital. And then I was moonlighting for, at that time, Revco and Discount Drug Mart. But I worked in inpatient and outpatient at Metro Hospital here in Cleveland.

Q. Okay. So Metro is in Cleveland, inpatient and outpatient. What did that consist of?

A. Again, inpatient was doing, you know, fulfilling unit dose orders and doing the IV add mixtures, making sure everybody got those. And then they had a separate ambulatory division, which eventually I migrated to. The hours were better. And that was just processing

prescriptions, you know, for the patients.

Q. Okay.

A. The outpatients.

Q. And then you said you were moonlighting at two companies at the same time?

A. Yes.

Q. What is Revco?

A. Revco ended up as -- would be -- would be CVS today.

Q. Okay. And what were your -- sorry, go ahead.

A. Through the multiple acquisitions, so ...

Q. There was a period of consolidation within the pharmaceutical industry, right?

A. Absolutely, yes.

Q. What were your job responsibilities at Revco?

A. I was a floating pharmacist. So I would just -- there was -- this -- actually, there was a store that I worked at where there were two female pharmacists who had children and they wanted to dial their hours back, and Revco

told them that they could dial it back if they found somebody that would work. So I would work ten hours there. Usually one shift a week type of thing. It was on a weekend.

And then I would work at Discount Drug Mart as a floater going to any location that they had an opening. So at that time, I lived in Euclid, Ohio. I might drive to Willard, Ohio, to cover a shift if it was available and I was willing to do so.

Q. Okay. And so basically just doing basic pharmacy work?

A. Absolutely, yes.

Q. I'm sure there's a better term I could use.

All right. And how long did you work at Metro?

A. Worked at Metro for probably two years or so.

Q. And I know I could do the math here, but too many questions in my head. Can you give me those approximate two years?

A. That would be about 1990.

Q. Okay. And earlier I think you

told me you came on with DDM in '89 so --

A. Excuse me. Yeah, it would have been '89 to '90 at Metro. Sorry. Yeah.

Q. Okay. So earlier when you testified that you came on at DDM in '89, you're counting kind of that floater work, right?

A. Correct. And that could have been a year later as well. '90 as well. I don't really delve on the earlier years that much.

Q. I'm just trying to get approximations.

A. Understood.

Q. So you quit Metro after about two years. What did you do after you quit Metro?

A. So at that particular point, I wanted to get into retail pharmacy, just found it better, a better experience for me, more patient centered. And so the decision was to either work at Revco -- I interviewed with Revco and I interviewed with Discount Drug Mart. So I took a position with Discount Drug Mart.

Q. And that would be in '89, right?

A. Thereabouts, yeah.

Q. Okay. What was your -- what was

the position that you took at DDM?

A. At that time I was a -- I think I worked as a floater for a short stint, but then I eventually ended up working in the Euclid store. And that was as a staff pharmacist.

Q. Okay. Did DDM ever give you any training in terms of -- at that level, okay, "This is what a diversion is and this is what we do to prevent it" or anything of that nature?

A. Yeah. I mean, back at that time I would say that we had -- and we still do have semi -- we have two meetings a year. And the requirement, because we are a smaller organization, is that every pharmacist attend.

There are exceptions. There may be, you know, 10 percent of the workforce that's unable to go to these meetings because they're on vacation. Sometimes they're covering multiple shifts for those two days to allow our store and our staff pharmacists to go. But we would track to make sure that, you know, there wasn't a chief pharmacist who wasn't going to any meetings.

These meetings were -- we would

talk about -- we would almost always -- I don't recall when we didn't have somebody from the State Board of Pharmacy. So when we talk about diversion, they would always talk about upcoming legislation. They would talk about the need to report. They would talk about addiction as far as amongst professionals and a variety of subjects.

During that span, we would have as well -- at every meeting we would have the State Board of Pharmacy. Maybe every few years we'd have somebody from the DEA that would come in and talk to us about diversion and what they're seeing and that type of thing, and what to do when you encounter diversion and that type of -- and we still do that today.

Q. Okay. On the pharmacy level, you talked about the need to report. Are you with me so far?

A. Correct.

Q. Okay. And you said you still do that today. If this has changed through the years, let me know, but tell me what's said about the need to report at the pharmacy level.

A. At the pharmacy level, I mean we address that at our pharmacists' meetings. I mean, that's -- we make -- sometimes we will go ahead at a meeting, and if we feel the need to recirculate a bulletin or a memo that might have -- you know, that has not changed but was last posted, you know, let's say five years ago or three years ago, we may go ahead and recirculate it into the meeting packet and then a representative or a supervisor from the pharmacy team will talk about that.

Q. Okay. And I assume -- I mean, in part of this training it's, okay, "These are the circumstances when you report, and this is who you report to"? Is -- anything else with respect to -- does that kind of put it in a nutshell, so to --

A. I think, yeah. When in doubt, report.

Q. Okay. Can you narrow -- can you kind of define that a little better? What circumstances do you report -- or is a report expected, I should say?

A. So if a pharmacist, let's say, on

a month end is doing a count and they find that they're short on their inventory on a specific drug, the first thing they would do is they would run a utilization report to determine -- they would investigate it on their own, okay, and just to see if there was maybe a prescription that wasn't logged into -- you know, and accounted because it was a perpetual type of thing that was done on a monthly basis.

So you would scan all the prescriptions for that month against the report and determine, okay, "Do I have a deficit?" If you had a deficit at that time, it was pretty much, you were done. You needed to report it to somebody else. Typically what would happen is a prescription wouldn't get logged in the book and there could have been a situation where -- that's why we morphed into doing back counts more religiously to avoid the issue if it's a Monday and it's my day to do the inventory and now I have a partner who maybe forgot to log a specific prescription, now I've got to go and reconcile that report. So it made it a lot easier for our pharmacists from that

perspective.

But what they would do is, they would escalate that to their pharmacy supervisor and they would include us as well.

Q. Okay. And you say you find the discrepancy, you're basically done. What's the step there? Who do you report to? Do you report -- you mentioned a 106, I think, to the DEA?

A. Well, what -- yeah. I'm sorry. They would, at that particular point, complete a 106. They would go ahead and send 106, notify the state board, okay, by telephone to let them know, and then they would send a 106 following up to the state board. And obviously, then, at that particular point, loss prevention would get involved.

Q. Okay. Were they expected to contact anyone at DDM corporate before sending that 106?

A. There may be times -- no. I mean, there wasn't a policy that said, "You must contact corporate before sending a 106." I mean, if a pharmacist did his -- or she did the

due diligence with regard to, "I'm short right here," they would typically -- I would probably say it was 50/50. Some would go ahead and send a 106. Some would call us and say, "I have a short."

"Okay. Well, send the 106. Go ahead and send it. Notify the state board."

And, again, you know, the state board was coming into our pharmacies or coming to our meetings every single year, and that was always a topic on what to do when you had a short and how to report it. And they even referenced the DEA from that perspective. So the process and what to do in those steps I think was very good as far as execution from the store level.

Q. In any event, pharmacists had the individual discretion to make the 106 directly to the DEA?

A. We would always make sure. If we were made aware that there was an issue, then we would make sure that that 106 was sent. But a pharmacist could send a 106 knowing that it's short. It wasn't -- we weren't sending the 106,

is what I'm trying to say.

Q. But they could do that without your directive and without repercussion, correct?

A. Yes.

Q. All right. So you're basically going -- shifting back to your career, you're basically on the pharmaceutical level, at the store level '89, '90. When was the next career jump for you?

A. I believe I took over from staff to chief pharmacist, which is head pharmacist, at the Euclid store. I don't recall how long I was there.

Q. Do you recall the approximate year?

A. It would have been in the '90s. And I was there for probably about, I would say, four or five years. And then I became chief pharmacist in Independence. And from there -- I was there for probably two --

Q. Can I stop you?

A. Yes.

Q. Because that way it will be

faster. How did your duties as chief pharmacist change, particularly as it related to diversions or compliance?

A. They didn't. Just a different location. So my responsibilities as chief necessarily didn't change. My challenges might be different.

Q. Okay. Sorry to interrupt you. Please continue.

A. Yeah. And so from there I went to the -- I was chief for probably one year -- or actually a staff. We had a pharmacist who was chief and we had a situation where either a medical leave and they needed stability in the store so I went back in as a staff pharmacist at our Lakewood store, and then from there I went to Westlake where I was -- I was there for the rest of my career until I moved up to corporate.

Q. Okay. And when did the move up to corporate occur?

A. That occurred in June of 1999.

Q. Okay. Did you apply for that position?

A. Yes.

Q. How did you learn it was vacant? What prompted you to apply, is a better question.

A. There was -- the individual that was -- there was -- somebody was stepping down and going back to store level, okay, and so that became -- you know, word traveled, and so I contacted management saying I was interested. I didn't know if anybody else was. I don't know how many people interviewed, but I was interviewed. And shortly thereafter, I was notified that I was selected.

Q. Do you know who hired you specifically, the individual?

A. Yeah. I mean, I was interviewed by actually Tom Nameth at that time, and I know that the owner of Discount Drug Mart had interviewed me as well.

Q. Okay. And fair to say you've now superseded Tom in terms of the level of the corporate structure, right?

A. Correct.

Q. Okay. So what were your positions when you moved into corporate? What was your

position -- I'm sorry -- in the singular, when you moved into corporate?

A. I was director of pharmacy operations.

Q. And what were the duties associated with that?

A. Again, it would be anything that was tied to operations at store level. So if we were rolling out a program, if we were rolling out technology, I had to make sure the stores were prepared to handle that. There was some training involved there as well. But that was essentially the responsibilities.

Again, at that time Tom and I shared -- we played out of the same sand box, so to speak, essentially with regard to responsibilities and duties. We had some store responsibilities. So we would manage those stores. And obviously, if there was an issue at a store with regard to diversion, I would handle it if it was my store. If it was Tom's store, he would handle it.

"Handle it" being he would take the reins there, involve loss prevention and,

you know, the head pharmacist. So at that time we didn't have pharmacy supervisors.

Q. I'm sorry. I know you told me this, but what was your exact position at that time?

A. Director of pharmacy operations.

Q. Okay. And how long did you hold that position?

A. Until 2010.

Q. Okay. And what happened in 2010?

A. So in 2010 -- it was probably around June or July again, we -- there was -- I became vice president of pharmacy -- pharmacy, and Tom became director of pharmacy operations.

Q. Okay. And how did your duties and responsibilities change?

A. Again, they really didn't very much. Over a course of time, what I tried to do was to differentiate our responsibilities to make us more efficient, because I thought that there was -- we weren't being efficient with regard to being able to drive performance at store level, possibly execution, so on and so forth, because we were sometimes working on the

same project without -- without the other person knowing.

So we tried to silo those responsibilities. So HIPAA comes along, "I'll take HIPAA and I'll work HIPAA and that will be mine." And fraud, waste and abuse came by, Tom would take that. When it came to, for example, you know, monitoring our SOMS program, that was something that Tom was doing, so he continued to do that piece. We didn't change that.

Q. What is the SOMS program?

A. Suspicious ordering monitoring.

Q. Okay. And you said Tom took that?

A. Yeah. He -- that was something that he was doing at that time, so he continued on doing that. He had worked well with Jill as well and with the pharmacy vendors and buyers, so he assumed that responsibility as well, and so I did not really meet with too many of the brand or generic vendors. So he had a good relationship with Jill and so we didn't break that up.

Q. Okay. And earlier you indicated you tried to silo this as much as possible. So

you had very little involvement in the SOMS post 2010?

A. No, I wouldn't say very little involvement, but as far as monitoring the reports that we had on a monthly basis and -- no, I -- that was something that he pretty much oversaw.

Q. How about -- I mean, you know, there's various, you know, suspicious order policies that we've seen, I mean, for lack of -- just to use a global generic term, that have been issued since then. I've seen your name connected to a lot of them. Did you have any involvement in determining what those policies are?

A. It depends on the policies.

Q. Okay.

A. So it depends on where, yeah.

Q. So situation specific?

A. Yes.

Q. Did your job title change after 2010? I think you're a senior vice president now?

A. Yes. In something about June,

July, I think this was -- April or May of 2016 I became senior vice president.

Q. And how did your duties and responsibilities change with that?

A. At that particular point, they changed in the sense that the lay of the land was a little bit different. We had more pharmacy supervisors. So it allowed me to be more visionary with regard to where pharmacy was going, business development and focusing on growing, you know -- and trying to come up with opportunities where we could thrive better.

Pharmacy was very, very difficult from the standpoint of, you know, there was some consolidation that was happening in the industry. And so that allowed me to kind of focus more at the top while I had subject matter experts, if you will, below me that were concentrating on other facets of the business.

Q. Okay. So shifting gears a little bit. We talked about a suspicious order policy. Does DDM have a suspicious order policy?

A. We have a system in place, correct.

Q. Okay. You have a system in place. Would that system be fairly characterized as "the policy"?

A. I would, yes.

Q. Okay. When did DDM first implement a suspicious order policy?

A. When I came in in 1999, I think that process was already in place.

Q. Can you describe that process in 1999?

A. The process at that particular point in 1999 was -- to the best of my knowledge, was a -- was a -- we would look at a rolling 12-month average report. So it would -- so basically a report would kick out on the first day of the month and it would look at anything that was above a certain threshold for that previous month based on 12 months worth of data, okay? So if it was above that average, it would kick out on a report.

And then Tom would go ahead and review that report and see if there was something there that was, what we would call, glaring or needed further inspection.

Q. Okay. And so fair to say since it was there when you came on in 1999, you didn't have any role in developing that policy, correct?

A. No.

Q. Okay. And at least some component of that policy -- I mean, you still do that today, correct?

A. Correct.

Q. Did the policy change -- have any additions put on it throughout the years? Is there anything else that's been added to the policy since the time you came on to -- 1999 till present day?

A. Yeah. We've added another report, which is our six-week average report. That's more of an order inventory function, but there's some usage there to help with SOMS in that if a PO was created at store -- by a pharmacy, what will happen is, the store will get a printout of anything that's over the six-week average and that would be inclusive for any medication, C-IIs or controlled substances or not. And that's by NDC, okay?

And so that would kick out at the store so a pharmacist then could review that and say, "No, I didn't want, you know, ten bottles, I only wanted one bottle." And then also that would be -- in the order manifest would be noted so that when somebody was picking a medication, that they would see that, okay, there's -- this is above the six-week average.

Depending on what that amount might be, it might be a notice to let Jill know. And Jill at that particular point would go ahead and if there was a discrepancy as such where somebody said, "Ten bottles. The weekly -- six-week average is one bottle. What do I do?" She would go ahead then and go into the inventory management system -- and I believe she had probably a few years worth of data, and she could probably speak more clearly to this -- to her part in the process. But she would review that.

And if -- typically she would go ahead and call the pharmacy, speak to the pharmacist and say, "Do you want ten or one?"

"No, I only want one."

Okay. So there was an order error, okay?

You know, if they said, "I want ten," for example. But her reviewing that would say one, one, one, one, two, and the average is 1.2 or something, and they want ten bottles, she would go ahead then and escalate that to somebody in pharmacy operations. That would be myself, Tom, or Jason.

Q. As you sit here today, can you think of an instance where she's ever done that, that escalation that you've referred to?

A. Not to me, no.

Q. Do you know -- do you have firsthand knowledge of her ever doing it?

A. I don't know. I don't know.

Q. Right. So she may have done it, she may not have. You just don't know?

A. Correct.

Q. And the six-month -- I'm sorry. Is it six-month report that we're talking about, that's how we characterize that?

A. I'm sorry. Repeat that.

Q. Is it -- you refer to this as the

six-month report?

A. No. It's got different names. I mean, some people refer to it as the -- there's a six --

MR. JOHNSON: Six weeks.

A. Six-week average report, yeah. The other report has got multiple names.

Q. I'm sorry. I just wrote it down -- okay. So we can call it the six-week average report; is that a fair --

A. Yes.

Q. Okay. It's in DDM's interest not to have too much inventory on the shelf, right?

A. That's true.

Q. I mean, it makes the store more efficient to kind of have -- just in time is the wrong term, but closer to what sales are expected on the shelf, right?

A. True.

Q. And that's kind of what the six-week average report is aimed at, is to make DDM more efficient, right?

A. I would agree.

Q. Okay. It's kind of what gave rise

to this report, so to speak, or at least its purpose?

MR. JOHNSON: Objection.

A. That's what gave -- that's what gave rise to it. However, it served a function also from the standpoint of identifying if there were any oddities or discrepancies that potentially there was either an amount that didn't need to be ordered or potentially was ordered and needed to or could be then escalated to pharmacy operations for review.

Q. So what I hear you saying -- and please correct me if I misstate it -- is, okay, inventory concerns were what gave rise to it but it could serve the function as a trip wire?

A. Yes. We found value in it in the sense that it was being printed at store level, and it was being printed at the pharmacy, and stores would obviously know -- there could be times that Jill could be reaching out to them. So there was a set of eyes on that. And then also they would be watching it themselves as well. So there were two. So we saw value in it from that perspective.

Q. Right. And earlier we talked about your personal knowledge as it related to Jill ever doing something. You recall that?

Can you ever think of -- to your knowledge, was there ever an instance where the trip wire was successfully triggered and you say, "Aha, we've got an instance here where the six-week average caught something that should not have happened"? Sorry.

A. When you say that, that would be basically an order error.

Q. Mm-hmm.

A. Yes.

Q. Okay. So --

A. So I would call you and say, "Do you want" -- or she would call and say, "Do you want the ten bottles?" "No, no. I only want -- I only want the one bottle."

Q. Okay. But an order error is really not a diversion, though, that's not --

A. Correct.

Q. That's just -- the problem there is you've got too many controlled substance or whatever the drug is on your shelf, right?

A. Correct.

Q. Okay. Aside from order errors, can you think of an instance where the trip wire was -- you know, "Okay. We've got a problem here. This is not an order error. This is something we need to alert the DEA" or anything of that nature?

A. Not to my knowledge, no.

Q. All right. So going back globally, you've got your suspicious order policy where you talk about the 12-month average, and then you say at some point subsequently you've got the six-week report that's supplemented.

Is there any other supplementation that was done to DDM's suspicious order policy?

A. When you say "supplementation," are you just referring to reports or --

Q. No. I'm sorry. I'll clarify.

What I'm interested in, you described the process as it existed as you came in 1999. Are you with me so far?

A. Correct.

Q. Okay. And my first -- I asked

you, had that process changed, and your answer to that was, yes, it changed because subsequently we added the six-week report. Okay.

I'm asking, is there anything else that was added to the policy, supplemented to the policy to improve DDM's ability to trigger -- you know, "We've got a suspicious order here"?

A. No, not to my knowledge.

Q. Do you know if DDM's suspicious order policy was ever reviewed by you or anyone else saying, you know, "We might need to make this more hefty or add any protections"?

A. No, it was not -- I don't recall reviewing it, but I will tell you that the suspicious ordering monitoring system was -- we have very little turnover at our company so we're very fortunate from that respect. So, you know, in the course of 20-plus years, you may have only had two directors of pharmacy. We've had one pharmacy buyer. And so the people that were essentially responsible for SOMS that were working it or had a role in it, that -- they

never changed, okay?

So, you know, so if there was -- you know, they -- if there was ever a need to do something, they would -- they could naturally make -- perfect the system or make it better and always make changes to it, but the system was working based in their eyes.

Q. Okay. I don't understand what you just told me, or at least the purpose of what you just told me.

A. I'm sorry.

Q. No. It's my fault. And one of my jobs here is to try to gain knowledge of the process.

Now, what I hear you saying is there's some virtue in the fact that DDM has little turnover and that improves the process somehow. Is that fair, kind of a 600,000 feet encapsules it?

A. That's fair.

Q. Okay. How does that help the process? I mean, what's the virtue in that?

A. The virtue in there is that when you're looking -- over a course of time you get

comfortable -- we don't have thousands of stores. We have 70 stores -- 74 stores.

Over a course of time -- and keep in mind, let's say -- let's reference Jason -- and Jill to some extent here. They know which stores are busy, okay? They know where our stores are. They know -- they know our customers -- they know who the customer is.

So when you're able to look at a store and you know that it's a high volume store, you know exactly where that store is, it might be in an area where -- "Potentially, you know what, I worry about maybe overutilization of something," you're going to look at that data a little bit differently as you scan that report.

Whereas, somebody who is just looking at numbers, it's a store, it's a store, it's a store, they don't have sales data. They don't have prescription knowledge.

But I think many of us in our organization, when we look at our 74 stores, we can tell you where they rank. I could tell you where they sit with customer service. I could

tell you which are my top immunizing stores, which are my top stores with regard to order inventory management.

I don't know many operators that were -- that can do that. And I think that speaks to, you know, the intimacy of our organization and the size of it as well. So from -- that was a virtue, you know, for the SOMS.

Q. Okay. And I think I'm getting closer to understanding what you're saying, so -- sorry.

How does that prevent a diversion, though? So I mean -- so they know the specific nature of the store is -- like if the volume increases aberrantly, that makes them more able to say, "Okay. We've got a problem here." Are you saying that?

A. It's just more intelligence that they have when they're making a decision. That's what that is.

Q. Okay. And what I'm not getting is, how does that intelligence -- I understand what you're saying. They're more intelligent.

They've got the intimate knowledge. I'm trying to figure out where the rubber meets the road and how that intelligence translates on their ability to say, "You know what? This is a potential diversion here. We need to do something."

A. Can you -- the potential would be location of the store.

Q. Okay. So --

A. I'm just bringing that up as an example.

So you may notice -- and as you do that report over a course of time -- for example, let's just talk about -- and you encounter -- you start seeing, perhaps, these potential increases above the six-week average, or increases above the rolling 12-month report. You're the one doing that report. It's not five different people over the course of a year or five years or ten years. It's really you doing that report. You really get to know the players, "the players" being the customers, that are in that -- on that report.

And it doesn't take long when

you -- you know, you may -- you may think about an issue at another -- I want to do more reporting on this specific store. It seems like multiple drugs are kind of falling on this report. So maybe I want to talk to the pharmacy supervisor. Maybe I want to run some data, okay? I mean, that's what I'm trying to say.

Q. Okay. And I think I'm getting there, but maybe I can go about this in a different way.

Can you think of an instance where that more intimate knowledge actually triggered saying, "Okay. We've got a potential diversion here. We need to do something"?

A. No, I cannot, but I didn't run that report. I didn't use that report on a monthly basis.

Q. Who would be the best person to ask whether that -- you know, whether an incidence like that happened where someone with that intimate knowledge triggered knowledge that, you know, this -- "We've got a potential diversion here and we're going to stop it"? Who at DDM would be the person with that knowledge?

A. Well, again, the two individuals that ran that -- the rolling 12-month report -- or I called it a controlled substance monitoring report, but -- it didn't have a title, but different folks use a different name for it. But that report was run by Tom and then Jason took over.

Q. Okay. So if -- would it be fair to say if -- I'm not saying they couldn't think of an instance, but if Tom or Jason couldn't think of an instance, it would fair to say there wasn't an instance. Are you with me?

A. Yes.

Q. Okay. That's accurate?

A. Yes.

Q. Thank you.

MR. HAWKINS: Entering a transition point, if -- I could keep rolling if you want, but we've been at this for about an hour and 20 minutes, if you want to take a break now --

MR. JOHNSON: Yeah, this is fine. Yeah. Makes sense.

THE VIDEOGRAPHER: The time is now

10:13. We're going off the record.

(Recess taken.)

THE VIDEOGRAPHER: Okay. The time is now 10:27. Back on the record.

BY MR. HAWKINS:

Q. All right. Before we broke, we were talking about DDM's suspicious order policy, and we kind of dovetailed off into the six-week average report.

Now going back to the monthly average of the policy -- are you with me so far?

A. Yes.

Q. Now, my understanding is, it's kind of like 99 percent increase of the monthly average. Is that kind of it in a nutshell?

A. Yes, that's it.

Q. Okay. What happens if a report goes beyond that 99 percent period?

A. So what would happen is, we would call it an oddity or, you know, anomaly or what have you, but it would show up on a report and now that that would require, you know, pharmacy operations to do something, okay? So -- and, again, to the best of my ability since I don't

work that report, but what I would see or expect is that Jason would look at that, look at the numbers, do a utilization report, okay, to try to determine, "All right. Are scripts coming in? Where is that -- are the numbers aligning?"

There might be -- there might be situations that are explainable. For example, perhaps we have a situation where we have a -- we brought in a controlled substance into our warehouse that we didn't have before. It's going to pop up on that report. There may be a situation if we had a robbery or a known diversion or, loss, that we need to replenish the controlled substance, and that would cause -- so there are going to be situations there -- and there's multitude of other ones -- that would kind of speak to how you would work that report.

But at the end if Jason or Tom did not feel comfortable that they were -- "I still can't -- I can't pinpoint to why, you know, this number is where it's at," they would send out a due diligence form. I don't think the form had a title, but it would essentially be a form that

would be sent to the store that Jason and Tom would complete identifying the drug, typically -- the NDC and what the specifics of that report as far as your average was compared to where you're at with this order. And they would ask for an accounting or some background on why they needed this.

They would send that out. Pharmacists were very good about getting that back to us and acting on that. So they would reply with it and then the pharmacy operations would, at that particular point, evaluate the response and make the determinate -- determination, excuse me, to see if it was a suspicious order or not.

Q. Okay. I'm not going to mark this as an exhibit thus far. I'm just trying to speed things along.

Is this what you're talking about roughly? Is that --

A. Yes, this would be it.

Q. Okay. Thank you.

MR. JOHNSON: The form he was referring to?

MR. HAWKINS: Yes.

BY MR. HAWKINS:

Q. Okay. So that form would be sent. There would be back and -- the pharmacist would fill it out. Then what?

A. The pharmacist would complete it. It would come back to pharmacy operations, and then Jason and Tom would then review what it was, what the comment was, what the -- to see if there is reason to determine -- for example, you know, when there was a situation where -- with acetaminophen toxicity, right, and there was -- the FDA was saying, "You need to cut back on your acetaminophen with your hydrocodone products, cut back because there's too much overdosage on acetaminophen's side."

What was happening was, some doctors, then, that were writing for that might scale back and go to a product with less acetaminophen in it, knowing that the patient might take four or five tablets a day if that's, you know, what their ailment required.

So as they migrated to a product with lesser acetaminophen, that would naturally

possibly create a bump up in -- and a justification on why they needed a -- you know, more than what the report was saying, more than their 12-month average, because a physician informed the pharmacy that, "No, I'm switching my patients that need this medication to the lower dose."

Q. What would happen if Jason or Tom found the pharmacist's excuse -- or not excuse -- or explanation unsatisfactory? What then happens?

A. What should happen at that particular point is we have a suspicious order.

Q. Okay. So that's what makes it a suspicious order. First, the 99 percent thing is triggered. A letter is sent to the pharmacist. The explanation is reviewed by Tom or Jason. And at the point if the explanation is not satisfactory, it then, in DDM's term, becomes a suspicious order?

A. Prospectively, though, you'd still have the six-week average report that would happen at the store and happen at the distribution center. So that would still be

there. But, yes, that was a component of our SOMS. And then would be the rolling 12-month, because it would hit retrospectively.

Then would be a -- pharmacy operations then looking at that report, making the evaluation. And if they didn't feel comfortable with that amount, that would trigger a due diligence, in other words, sending that form that you just showed me, that would go to the store. The store would send it back. And if the response is not appropriate, then at that particular point, that would constitute a suspicious order.

Q. Okay. So the only thing I heard you change in my explanation there was adding the six-week average report, correct?

A. Yes.

Q. Okay. And that's -- and you -- we talked about that extensively, right?

A. Correct.

Q. And does the six-week average do anything to detect suspicious orders that we didn't already discuss?

A. I mean, again, it's -- if a

pharmacist -- well, the other report would catch that. So if it was a report that was an inventory order error, that would still get picked up in this report. It's just we would catch it sooner potentially.

Q. Okay.

A. What I'm trying to say -- and that's why I introduced that as another piece on there or bolted on to that -- is that -- and, again, I don't recall it happening, but if it showed up as being ten is a six-week average -- six-week average of one, somebody requested ten, Jill contacts the store, the store says, "Yeah, I want ten."

Despite her going into the inventory management system seeing there's nothing that says that they should be getting ten, you would think that she -- or she would -- would come to us and get approval. She would take it up, say, "Something doesn't seem right. If you guys want to approve it, let me know."

Q. Okay. And you used an important word in that explanation. I think you used the word "prospective." Remember saying that?

A. Yes.

Q. Okay. And I think what you used is that the six-week report is prospective. Is that what you said?

A. Correct.

Q. Okay. And I think there is kind of a pregnant negative there in that the monthly average is retrospective, correct?

A. That's correct.

Q. So fair to say that the 12-month is retrospective where the six-week is prospective?

A. That's correct.

- - -

(DDM-Ratycz Exhibit 2 marked.)

- - -

Q. Okay. I'm now handing you what -- I think we're on Plaintiff's Exhibit 2.

Do you have it in front of you sir?

A. Yes, I do.

Q. Do you need time to review it? And I'll -- you can review the whole document if you'd like, but I'll tell you the first

paragraph is the only thing I'm going to question you on.

A. Okay. I'm fine.

Q. Okay. Have you ever seen this document before today?

A. Yes.

Q. All right. We talked about your deposition review earlier, the seven- to eight-hour period. Did you see this document in your review?

A. Yes, I did.

Q. Okay. So you're familiar with that first paragraph there?

A. Yes, I am.

Q. Okay. And as I'm sure you're aware, my interest in that paragraph, starting with the second sentence, "We do not sell any items outside our own company, so there is no policy in place for ordering patterns or payments amounts that would identify potential diversion or criminal activity."

First of all, do you believe that's an accurate statement?

A. Absolutely not.

Q. Okay. Why not?

A. Because we do have a procedure -- what happened here is that -- this was tied to our VAWD accreditation. And there's some background on that. We thought we needed to have this VAWD accreditation. VAWD stands for Verified Accredited Wholesaler Distributor.

And this accreditation is for anybody who's selling, you know, medications. It was a requirement by a payer to have this in place. There was a gray area there in our interpretation. And I'll answer your question. It's just some background there.

Q. No, no. Please continue.

A. There was a gray area there that we did not -- since we're a distributor to our own stores, whether we needed that. Because we're not distributing to a customer. Essentially our stores, I guess, are our customer.

So we didn't think we needed it. It was recommended that we go through this VAWD accreditation process. We got halfway through that process. The payer said, "No, you don't

need that because you're only sending it to your own stores. If you were selling this to another entity outside of Discount Drug Mart, then that would be required."

So the steam sort of came -- the wind was sort of out of the sails for this entire process with the VAWD here. So, in other words, I don't think that there was a great deal maybe spent on formalizing our policies correctly.

But in this situation, when I read it, the word that threw me off was -- I mean, there's obviously, do not sell any items outside our own company, but payment amounts, because that made no sense. Because we don't -- we move product from our distribution center to our store. We don't make revenue off of that move. Certainly if there's a sale at that particular point at the store, we would.

So as I read that, "payment amounts" made absolutely no sense. And what happened here was, when Jill completed a template -- VAWD would provide you a template and you would answer questions. And those,

based on your answers in -- for that template, you would create -- it would help you create policies and procedures.

And one of those questions was, "Do you sell outside of your own company?" And so when she incorporated that into the policy, what it should say is, the highlighted part there, "We do not sell any items outside of our own company so there is no policy in place for ordering patterns or payment amounts that would identify potential diversion or criminal activity, if -- comma, if we were to sell to an entity outside of Discount Drug Mart."

So that's what it should say, and that was her interpretation.

Q. Okay. I want to be very clear about this. I'm not questioning the accuracy or the honestly of what you just told me. In fact, it will become clear why I'm asking. It's personal knowledge, is what I'm really trying to get at. You gave me a very detailed explanation of why that sentence is in there.

Did you have that explanation -- if this litigation had never happened, you never

had the eight-hour prep for the -- would you be able to look at this document and immediately give that answer that you just gave?

A. I could tell you right away if I -- without any preparation that's -- that that is incorrect.

Q. Okay.

A. Yes.

Q. That's one answer. I mean, that's part of it. I get that. But your larger explanation that you talked about that referenced Jill and everything like that --

A. No, no.

Q. Okay. That -- so in other words, you've researched this, you've talked to other people and you've created an explanation. I'm not challenging the accuracy. But you created the explanation after this -- after you saw this in relation this litigation, correct?

MR. JOHNSON: Objection to the word "created," but anyhow ...

MR. HAWKINS: I don't know what other.

BY MR. HAWKINS:

Q. Have you fab --

MR. JOHNSON: Okay. Fabricated is not ...

MR. HAWKINS: Yeah, I was going to say, that's -- yeah, you're not going to like that one either.

BY MR. HAWKINS:

Q. But you formulated, for lack of a better -- I'm trying to use a nonpejorative term. But you formulated this explanation after you saw this in the litigation, correct?

A. That would be correct, but I only spoke to one person, not multitude.

Q. Okay. And that's actually what I'm getting at. Okay. Because it sounds like there's a lot going on here and you obviously -- in order to give that explanation, you had to talk to some people. So I want to know everyone you talked to to come up with that explanation.

A. I spoke to Jill.

Q. Okay. And so basically what you just told me, you heard of through Jill?

A. Yes.

Q. Okay. As you sit here today, do you have any reason to doubt any part of the accuracy of what Jill told you?

A. No, I don't. Jill, for background, has been with us for 30-plus years as our pharmacy buyer, and she's thought of with very high regard and does a very, very good job for us in her role. And that would come from -- anybody at our company would tell you that. So from that standpoint, no.

Q. Okay. And I'm sorry. I probably misunderstood there. I'm not questioning Jill's integrity either. The only thing is, sometimes people have different ideas, understandings of things. I just want to know if yours matches that of Jill.

A. No. I agree with what she said.

Q. Okay. What point did you -- when did you make this investigation to come up with this -- or add this explanation?

A. I'm sorry. Repeat that.

Q. Yeah. We talked about you kind of conducted an investigation. You went and talked to Jill. When did you do that?

A. When I was reviewing Jason's deposition, this was one of the exhibits. And so I read it, and I said, it doesn't make sense because it's not what we do. And as I read it, I -- you know, it didn't make sense, it was contradictory.

Also, the word "payment amounts" I could not understand why that would be in there, okay? That part made no sense to me. Because, again, we're moving product to our stores, so -- and, again, after speaking with Jill, payment amounts would correlate to selling outside of Discount Drug Mart, which we don't do.

Q. Okay. So fair to say, by way of your deposition review is what kind of prompted and triggered all of this?

A. Yes.

Q. Was Jill the one to create this document?

A. Yes.

Q. Do you know if she had assistance from anyone else?

A. That, I don't know. When we originally started this process, I had asked

her -- I had tasked her with getting the VAWD accreditation, and I told her that she had all the resources available in our department. Anybody from administrative help, if she needed it, to Jason, myself, if necessary, and certainly Joe Muha as well.

What ended up happening here is halfway through this process, when we got the direction from the payer that, "No, Discount Drug Mart is fine, you're not in jeopardy of a violation of a contract because you do not have this VAWD accreditation," we were contemplating on whether to continue with this accreditation.

However, we had paid. So it made sense to just go through the process. So -- and, again, you would have to speak to her, because I did not speak to her on this accord. But my opinion is that she realized that this accreditation was probably not going to be renewed, more than likely, at its next time.

And so she developed these SOPs and really just got it -- built them in a way so that they would be there, but not necessarily use other resources in the department. Again,

that's my opinion, so ...

Q. Is there anyone else you know that shares your opinion? I mean, why the qualification, I guess, is my question.

A. So when you asked who I spoke to regarding this, so I spoke with her.

Q. You were delineating what was Jill's opinion and what was your opinion?

A. Yes. Now -- yes.

Q. I understand. All right. I don't -- I'd like not to have to put all these documents in front of you. But you said you reviewed all of Jason's deposition exhibits?

A. Yes.

Q. So you saw that there's more than one document like this?

A. Yes.

Q. And I don't need to waste your time by going through each one of these, right?

A. Correct.

Q. So you would agree with me that there's several documents with this statement in there, correct?

A. Yes.

Q. Okay. Who would review these documents?

A. Typically --

MR. JOHNSON: I'm going to object to that last question. I'm not sure -- there are several with this statement in there?

MR. HAWKINS: Yes. I think --

MR. JOHNSON: I just remember 112, but ...

MR. HAWKINS: I know there are -- well, it's my understanding there were at least three.

MR. JOHNSON: And it could be I haven't seen them.

MR. HAWKINS: I think --

MR. JOHNSON: Were they all introduced as exhibits?

MR. HAWKINS: I know several were, or at least multiple were. I mean, "several" may be a loaded term, but multiple were introduced as exhibits and there's -- I will state, to the best of my understanding, there is -- there are

multiple iterations of this document.

MR. JOHNSON: Okay. Well, I'm not questioning you. I just -- I didn't -- I don't have that recollection. I just remember this one.

BY MR. HAWKINS:

Q. So who would review these documents?

A. This typically would be reviewed by myself, Jason, and because of the pharmacy warehouse, it would be Joe, as well, Muha.

Q. Okay. So -- Joe?

A. Muha.

Q. Muha. Okay.

A. Yeah.

Q. So you, Jason, Joe Muha, all have -- substantial parts of your tasks at DDM is government compliance. You understand there's rules and regulations with DEA. Three people, right?

A. Correct.

Q. Okay. So when all three of you read this and saw this statement, you didn't say, "Whoa, wait a minute, this isn't something

we can say." Right? I mean, did that ever happen when you reviewed these documents?

A. I don't recall reviewing them.

Q. Okay. Can you think of any explanation how someone like you, Joe, or Mr. Muha could review this document and not say, "Wow. That's an -- not an inaccurate -- that's not an accurate statement"?

A. I'm sorry. Repeat that again.

Q. Sure. Can you think -- as you're sitting here today, can you think of any explanation how someone like you, Mr. Briscoe, or Mr. Muha could review this document and not say, "Oh, wait a minute. This isn't accurate."

A. If we were to review it, we would catch that.

Q. Okay. So if you were -- so it's possible you just never reviewed it?

A. Yes.

Q. Okay. Because you'd understand that the DEA requires such a policy to be in place, right?

A. Correct.

Q. We're on 3, I believe.

- - -

(DDM-Ratycz Exhibit 3 marked.)

- - -

Q. Mr. Mulligan is now handing you what has been marked as Plaintiff's Exhibit 3.

Now, you have the option to read through the whole thing. I hope you don't exercise that option because there are only two that I'm going to be interested in.

If you could direct your attention to interrogatory number 5 on page 3. And I'll read it. "Please identify any persons" -- I'm sorry. Strike that.

Have you ever seen this document before today?

A. Yes, I have.

Q. Did you see it in relation to your litigation deposition review?

A. Yes.

Q. Did you play any part in helping answer these questions?

A. To some extent. There were some that I participated in.

Q. Which ones?

A. I mean, there were some collection of data where I could find it, that type of thing. I don't recall specifically.

Q. Okay. Can you do me a favor so I don't have to do this. If we're talking about an interrogatory response and you did play any part in formulating it, will you alert me of that?

A. Yes, I will.

Q. Thank you. So Interrogatory Number 5, "Please identify any persons employed by you or who received compensation from you, including any former employees, who reviewed or analyzed data regarding the distribution and/or dispensing of opioids or your opioid products."

And then from 1990 to present.

You're identified on there, correct?

A. Correct.

Q. Okay. Please tell me everything that you do with respect to, quote/unquote, analyzing data regarding the distribution or dispensing of opioids or your opioid products.

A. What I do?

Q. Yes. Your name is listed. In other words, I want to know why your name is listed there, shorter answer -- shorter question, I should say.

A. I mean, there may be times where, you know, when we were -- there could -- there could be instances where, for example, on the monthly -- rolling 12-monthly report where possibly Jason, and even Tom, would get a response back and maybe they wanted to speak to me in regards to, "Look at this response. How do you feel about that? Do you feel comfortable about it?" That type of thing.

Q. Can you recall that incident ever happening?

A. Yeah. I recall one that happened. And I actually recall the specifics of it. I don't recall the medication. But it was a situation where there was -- we went from zero of a medication that was ordered to something that was in the high 15s or something that was way up there. So it went zero to 50 real quick. Not 50 being the quantity but --

Q. 22 ring a bell?

A. I don't recall the exact number, but I do know that the issue at that time was we were having -- it was blamed on the order -- reorder system that we had. And we were having some issues with it, and so we spoke about that, and that was -- that was fine.

Q. Okay. So one of your involvements is -- so you get these -- the report I showed you earlier, you'd get that and you'd help analyze it with Jason?

A. I could if he needed assistance.

Q. Okay. But you have done that, is --

A. Not with Jason. I have not.

Q. With Tom?

A. With Tom, yeah. And that didn't happen very much. But, again, that would be if we sent out a due diligence form to the stores and the response back, perhaps we just wanted another opinion, then that would be me.

Q. Okay. And it doesn't matter -- I mean, it does matter if these are accurate. But in terms -- I'm not faulting anyone for being inaccurate. But in terms of actually analyzing

data, you don't do that, and it's inaccurate -- to the extent this is saying, you know, you analyze data, that is inaccurate then?

MR. JOHNSON: Objection. It's an ambiguous term anyhow.

Q. Okay. How do you understand "analyzing data," sir?

A. I mean, I look at data all day.

Q. Okay. With relation to opioid sales?

A. Yes and no. I mean, in terms of determining, you know, whether we're moving product, what to do on our -- with our wholesale contracts with specific C-IIs. I mean, I do look at data from that perspective, so ...

Q. And how do you analyze it?

A. You analyze it in different ways. So am I analyzing it from a standpoint to look for, you know, a suspicious order, no, not from that perspective.

Q. Okay. So there are three other names listed in that interrogatory response: Tom Nameth, Jill Strang and Jason Briscoe. We've talked about all three of those

individuals.

Can you think of anything they do that we haven't talked about? You've told us what they do. Can you think of anything that they do with respect to this that we've not discussed?

A. No. I think we've covered most of it.

Q. And to be clear, I'm just trying to be courteous of your time and not go over --

A. Sure.

Q. Please turn to page 7. And I will read the pertinent part.

MR. JOHNSON: Which one?

MR. HAWKINS: 14. I'm sorry.

Q. "Please identify all persons who are responsible for administering, overseeing developing or implementing any and all policies, procedures, systems or programs designed to detect and report suspicious orders to -- suspicious orders or to maintain -- suspicious orders or to maintain effective controls against diversion or controlled substances from January 1st, 1990 to present."

Sorry. I botched that reading pretty poorly, so -- but you're familiar with the language in question?

A. Yes.

Q. Thank you. All right. Your name is on here, correct?

A. Yes.

Q. All right. What policies and procedures did you help implement?

A. As I stated before, the rolling 12-month was already in play --

Q. Right.

A. -- at that particular point. I believe the six-week average was implemented sometime in the early 2000s. And so that more than likely was Tom's involvement. So I didn't -- I didn't have a hand in that. And that could have been, again, somebody else's involvement from an IT perspective, but -- yeah, that would be it.

Q. Okay. So really no policy is developed by you, correct?

A. Correct.

Q. All right.

A. Now, you're talking about -- you're talking specific to SOMS, correct?

Q. Yes.

A. Okay.

Q. And just for the record, what are SOMS?

A. Suspicious order monitoring system.

Q. Thank you. And if you don't have -- you're not charged with having personal knowledge of these answers, so I just want to know what your knowledge is.

So for each name, can you think of what Tom's -- Mr. Nameth's involvement would be?

A. Tom worked the -- Tom worked the report. So if there were some changes made -- and there were some that were implemented that had to do with our pharmacy management system when we changed, and I know that either Jason and him had made some recommendations to how that report was running. But that's why he would have been named there.

Q. Can I stop you there? Okay. So pharmacy management systems change, can you tell

me about that?

A. Yeah. That was, we went from a -- an old Legacy system to a newer PioneerRx, which is our pharmacists, how we process prescriptions. And so there were some changes made there that allowed the report to run better.

Q. Okay. And how did that relate to suspicious orders?

A. It was tied, I believe, to the 12-month rolling report.

Q. So that's kind of how the 12-month rolling got its information?

A. No. They made some changes to it, I think, as far as making it more family oriented. And, again, I didn't run that report or use that report, so I do know that through Pioneer, we were able to make some changes to that report, so ...

Q. Okay.

A. I can't speak to that specifically.

Q. So that's one of the things that Tom made a change. Can you think of anything

else?

A. It would be Tom or Jason. I don't know who made that change.

Q. But sticking with Tom -- or Mr. Nameth. I'm sorry, I don't mean to be impolite. With respect to Mr. Nameth, can you think of anything else that he changed with respect to policies?

A. No.

Q. Okay. And then there's P.J. Ferut?

A. Mm-hmm.

Q. Okay. Tell me about Mr.[sic] Ferut with relation to this --

A. P.J. was vice president of IT.

Q. Is he still there?

A. It's a she.

Q. I'm sorry.

A. No. She retired.

Q. Okay. And I assume this just kind of falls in data compilation and whatnot?

A. Yeah. Yes.

MR. JOHNSON: And I just wanted to register an objection. In going back a

few questions, you only asked him as a follow-up question about implementing, but the -- it does call for administrating, overseeing, development -- developing or implementing in the answer to interrogatory.

MR. HAWKINS: Are you talking about number 7 or number 5, or are you talking about --

MR. JOHNSON: No. I'm talking about Interrogatory Number 14.

MR. HAWKINS: Okay.

MR. JOHNSON: Yeah. But -- yeah, I mean you narrowed it then later. But these people are listed because they may fall under one of those categories.

MR. HAWKINS: I understand that, and the only thing I want to know right now is about policy and I'm just trying to figure out what personal knowledge he has.

MR. JOHNSON: Well, that's fine. I just -- I didn't know if you were

questioning the accuracy of the interrogatories.

MR. HAWKINS: I'll state on the record I'm not stating the accuracy of any interrogatories. I just want to know what knowledge --

MR. JOHNSON: Okay.

MR. HAWKINS: -- he has to -- with respect to them.

I'm sorry for talking over each other, making your job hard.

BY MR. HAWKINS:

Q. Ms. Strang, again, zeroing in on policies. What involvement did she have on any policy level?

A. If there was a decision that -- I mean, being a user of the six-week average -- I mean, that would be her role, would be if she wanted to make a change, that -- to make it easier, create less false positives, for example, that would be -- that would be tied to her.

Q. Okay. Do you know if she's ever done that or --

A. I don't know. I don't think so.

Q. Okay. And Mr. Briscoe, we talked about him quite a bit. Is there anything else you can think of solely as it relates to policies?

A. Not that I'm aware of.

Q. Okay. And you, of course. And then Mr. Miller?

A. Yes.

Q. With respect to policies, can you think of anything that he was involved in or responsible as it related to policies?

A. No.

Q. Okay. And then the only other term I'm interested in Interrogatory Number 14, is it talks about overseeing, responsible for administering and overseeing. I assume overseeing, that's something that pretty squarely falls in your end of it, correct?

A. Yes.

Q. I mean, you're kind of the overseer.

Would that be true for the rest of the individuals listed on there?

A. The one that would probably, I would say, would be Jason as well.

Q. Okay. And what role does he have in overseeing such issues?

A. Just from an operations standpoint, so -- and, again, he's a user of the CSMR, the controlled substance monthly report, which we call the rolling 12-month average report. So from that standpoint, I would say that, you know, he's got role in that policy as well.

Q. Okay. I hand you what will be marked as Plaintiff's Exhibit 4. I should say Mr. Mulligan will.

- - -

(DDM-Ratycz Exhibit 4 marked.)

- - -

MR. JOHNSON: I'm sorry. Can we go off the record just a second?

MR. HAWKINS: Of course.

THE VIDEOGRAPHER: The time is now 11:01. Going off the record.

(Discussion held off the record.)

THE VIDEOGRAPHER: Okay. The time

is now 11:03. Back on the record.

BY MR. HAWKINS:

Q. All right. You have been handed what is Plaintiff's Exhibit 4 starting at Bates number 83190. And it is -- and it starts with a -- the top of the e-mail chain with an April 5, 2016 e-mail from Mr. Briscoe.

Have you ever seen this e-mail before, sir?

A. No, I have not.

Q. Okay. And can you take some time -- it's relatively short -- to review it.

A. Yeah, I read it during the break.

Q. Oh, perfect. All right. So at the bottom, it's a letter from Mr. Tony Bruce, and it looks like Hometown Pharmacy. Do you know what Hometown Pharmacy is?

A. Yes. It's a small chain.

Q. Okay. A competitor of yours, yes, or --

A. We don't compete with them so -- but they're -- I'm not sure -- what part of town -- or excuse me, what part of the country they're from, but they're -- we definitely don't

compete with them.

Q. Okay. And they're asking your help, basically, for -- to develop a suspicious order monitoring policy?

A. That's what it appears to be, yes.

Q. Okay. Is that common?

A. I couldn't tell you.

Q. Okay.

A. Yeah.

Q. Have you ever seen anything like that before?

A. No.

Q. All right. And then Jill, going up, asks someone to forward her the suspicious order monitoring policy, and then she responds -- I mean, there's another indication, "I don't even know if we have anything in writing."

First of all, is there anything in writing?

A. We have a system in place.

Q. Right.

A. I don't necessarily know if it's in writing, and that is -- the reason for that

is the people that are in the -- that are responsible for SOMS or work with SOMS, that playlist hasn't changed. It's been the same people for the last 20-plus years.

And, you know, being a smaller company, you know what? We've -- it could be its strengths, and at the same time we may not be big on formalized operating procedures. I don't want to make that sound negative, because if it's involving 100 pharmacists or 200 pharmacists, we should have a policy and procedure in place, and we would.

What's unique about this is that we've got three or four people that are responsible for our SOMS, so -- and we're not constantly having a new pharmacy buyer every year where it would sit there and think, "Well probably need to have something in writing to provide direction for that employee."

The circle is small, and it's not changing. And because of that I think we fall into a comfort level of we know how we're operating, and we're operating with confidence -- and that we don't have to have a,

or don't need, that operating procedure that we're necessarily ever going to look at.

Q. Okay. And I'm just trying to understand your testimony. You said, you know, if you had 100 to 200 pharmacists, that might be different, right?

A. I am sorry. Yeah. It depends on what we're communicating. So, for example, let's just talk HIPAA as an example. We have a HIPAA policy and procedure manual because HIPAA is at store level from a standpoint that reporting a breach, those individuals we wouldn't want to say, "Yeah, everybody knows how to report a breach."

No. We want to give them -- they may only report one breach, you know, a year or whatever. They might not know what a breach is. So we want to give them a resource to look at, you know, from that standpoint.

So the circle now isn't three or four people. The circle for HIPAA is hundreds of people, okay? So in that example, having a policy, yes, a written policy is -- makes sense.

Q. Okay. But as it relates to

suspicious orders, you said that if you had 100 to 200 pharmacists, then it might make more sense. Remember that testimony?

A. That was relative to -- no, that -- I mean, I was just using that as a number.

Q. Okay.

A. Yeah, it had nothing to do -- yeah.

Q. It's fair to say you have 74 pharmacists, right?

A. I'm talking pharmacists, not pharmacies. So sorry, my bad.

MR. JOHNSON: And I'm going to object to the line of questioning in that it's unclear whether or not you're referring to our distribution system or the store level. So -- I mean, that was all intermixed in there, so ...

Q. Okay. How would it -- how would it change if it referred to the distribution level as opposed to the store level?

A. Well, again, distribution is -- is -- there's -- it's a finite group. They're a

very intimate group of three or four people, okay? So when we start going to store level, we can't control. We don't -- that group has gotten bigger, okay, and that circle, so having an operating procedure, something that's written, something that's a resource that they could turn to makes sense.

Q. And earlier I said you have more than -- you have 74 pharmacists. I meant to say you have 74 pharmacies, correct?

A. We have 74 pharmacies, and my example there was just to say that, you know, there's -- it's impossible to train 100 pharmacists in that example without a standard operating procedure. It would not be easy.

Q. Okay. Do you know if the DEA -- I mean, if the DEA asked you for that policy, what would you do?

A. We would annotate something. We'd put it together. We would describe it. It's a system. I would also say that the DEA has been to our facility. They come every two years and they stay for a week.

Q. What do they do when they're

there?

A. You would have to talk to Jill, Jason and Tom. They're typically involved there. And if I -- if there's an issue, I get involved from the exterior. We've not had a problem. They will evaluate security, I know that. They will look at -- they look at some data, that type of thing, you know, and -- but they're there for typically a week.

Q. Do you know what data they look at?

A. I don't know. That would be -- Jill sits with them and usually will have somebody from operations, which would be Tom or -- would have been Tom or Jason.

Q. Thank you.

Mr. Mulligan will now be handing you what will be marked as Plaintiff's Exhibit 5 starting on Bates number 31932, a document entitled Chain Drug Consortium Controlled Substances Model Policy.

- - -

(DDM-Ratycz Exhibit 5 marked.)

- - -

MR. JOHNSON: Bates number?

MR. HAWKINS: I read that, I think.

MR. JOHNSON: Oh did you? I'm sorry.

MR. HAWKINS: He doesn't get it twice. General principles.

BY MR. HAWKINS:

Q. Have you seen this document before today, sir?

A. I have seen it, yes.

Q. Okay. How about in your review, did you review this particular document at all?

A. No, I did not.

Q. Okay. When did you see this document?

A. Actually, I did see this document yesterday -- this morning.

Q. In what context did you see it this morning?

A. It was provided to me.

Q. By whom?

A. By my attorney.

Q. Okay. Did you review it?

A. On my phone, yes.

Q. Had you seen this document before this morning?

A. Yes.

Q. Okay. First of all, what is this document?

A. This document -- and I would have to -- again, this is a -- Chain Drug Consortium is a group of chain drugstores that we belong to. So we would basically aggregate our volume to try to find vendors and land on best possible costs with pharmacy services, okay?

And this individual that worked at this -- we called it the CDC, had come out with a policy -- I don't know where he got this. I don't recall --

Q. Can I stop you?

A. Yes.

Q. You said "this individual." What individual are you referring to?

A. I'm sorry. It was compiled by Ed McGinley --

Q. Okay.

A. -- and he was actually in charge

of the CDC, our Chain Drug Consortium. And so he had brought this up as a -- or sent this out as a resource. I don't recall the specifics of why he sent that out, if there was a member request or what have you. I'd have to see the e-mail.

Q. Okay. And it's fair to say, then, that DDM had no role in its creation?

A. In this creation, absolutely not.

Q. Okay. And do you remember when it was initially sent out to DDM?

A. I don't. That's -- obviously 11/1/2013 is when Ed compiled this, but I don't know when it was sent out.

Q. Okay. Do you recall if you ever reviewed this and saying, Oh, boy, this is something we should take a look at, or we should implement these things, not implement these things?

A. The mindset for me at that particular point -- and, again, I don't recall when I received this, but obviously it was compiled 11/1. So it's safe to say it was after that period of time. Hydrocodone was going to

be going to a Class II, so it was my thought process that potentially we would maybe not be warehousing controlled substances after that. That was a decision that we would make.

So from a standpoint of having a controlled substance model policy with regard to our distribution center, I didn't spend time on it specifically. I knew that the amount of SKUs that we were going to have once hydrocodone was going to go C-II was going to diminish significantly and, again, perhaps not even have controlled substances at our warehouse, so ...

Q. What decision was made with respect to warehousing on hydrocodone?

A. It went to a Schedule II. So at that particular point, it was -- once it was dried up, we ordered it from our wholesaler.

Q. Okay. So the decision was made not to warehouse it and just order it directly from the wholesaler?

A. Yes, yes. Because we don't do Schedule IIs.

Q. So fair to say, aside from your review this morning, you weren't terribly

familiar with this document by way of your work at DDM?

A. I mean, I read pieces and parts, and I know that in reading this, that there were some things that we incorporated. You know, it talks about red flags on one of the pages. You know, I remember specifically there's some things that we cut and paste and tried to implement in our pharmacies to make us better from that respect, so ...

If you're asking me if there was anything that I took and cut out of here to implement within our SOMS, the answer would be no. And, again, that would be because at that particular point, we were leaning on maybe not warehousing controls. Because right now I think we only have 14 opiates that we even stock, and I think five of them are partial opiate agonists, which they're used for addiction and not even used for pain.

Q. Would it be fair to say this document is more aimed at the pharmacy level rather than the warehousing suspicious order monitoring policy?

A. Yes.

Q. Okay. I mean, the fact -- please correct me if I'm wrong since I don't understand this stuff nearly as well as you. But to me this really doesn't even address SOMS, right?

A. I didn't get far enough in the weeds in here in the back, no, but I know that there were some things here that we implemented at stores, yes.

Q. Okay. Mr. Mulligan will now be handing you what will be marked as Plaintiff's Exhibit 5 beginning in Bates number -- we're at 6? I'm sorry. Plaintiff's 6 at 91606.

- - -

(DDM-Ratycz Exhibit 6 marked.)

- - -

Q. Have you seen this document before?

A. No.

Q. Okay. So you've never seen this document at all?

A. Well, I'm still looking at it.

Q. Sure.

A. So ...

Q. I'm sorry. I didn't mean to --
A. No. It's a -- I'm trying to understand the difference between this document and the one you just gave me.
Q. That's my next round of questions. I will represent that there are some differences. Not a lot, but there are some.
MR. JOHNSON: Well, that would take a while to -- for him to review both of these.
A. Yeah.
MR. HAWKINS: Well, I'm going to ask if he's aware of them. I'm not asking him to speak as a corporate representative. I just want to know what's in his personal knowledge.
A. I remember this. I have not seen this one.
Q. I'm sorry.
A. "This" being 5.
MR. JOHNSON: When you say this --
A. Exhibit 5. I'm sorry.
Q. And you've not seen Exhibit 6?
A. No, I have not seen it.

Q. Exhibit 6. I'm sorry. So you have no idea how this document came about, Plaintiff's 6?

A. I do not.

Q. Okay. Do you know who might?

A. No, I don't. I mean, within our department -- somebody like -- would either be Jason or myself or Jill.

Q. So one of those three, it would have to be them?

A. I would think, yeah.

Q. Okay. And -- strike that.

Does DDM have a controlled substance model policy?

A. Controlled substance model -- we have policies on controlled substances, yes. There's some things that we do. I wouldn't say that we have something called a controlled substance model policy that's filed like this. Do we do some things with controlled substance quality assurance, yes. Do we have policies on how to report, you know, theft, yes. Do we -- you know, so there's bits and pieces of all of this that's in policy -- or SOPs, if you will.

Q. Okay. So what I hear you saying is, "We have a bunch of policies but there's no unified almost Bible, so to speak, of our policies."

Is that a fair characterization?

A. There would not be a compilation, yes, of this.

Q. Okay. And given your position, if there were such a compilation, you'd know about it, right?

A. Yes.

Q. And so fair to say -- I have to ask for the record. I know the answer, but fair to say you don't know the differences between the two documents, Plaintiff's Exhibit 5 and Plaintiff's Exhibit 6?

A. No. I could read them and --

Q. Sure. I'm not asking your -- what I want to know is what's in your personal knowledge, not --

MR. JOHNSON: At this moment?

MR. HAWKINS: At this moment, right.

BY MR. HAWKINS:

Q. Please turn to page 8 of -- we'll call it 5, Plaintiff's 5. It's the first one I handed you.

A. I'm sorry?

Q. Page 8 of --

A. Page 8, okay.

Q. -- Exhibit 5.

A. We're still looking at this? Oh, this one.

Q. Sorry. We'll call that one 6 and the one you're looking at now 5 for -- yeah, please take your time. I'm not trying to rush you.

A. Again, it's page 8, right?

Q. Correct.

A. Okay.

Q. And at the bottom, the bottom, say, fifth of the document, there's "Government Identification Required."

Do you see that here? I've got it highlighted.

A. Yes.

Q. Okay. Now, I am notorious for

missing things, but I read through 6 and couldn't find that in 6. Now, since you don't know about 6, I'm not going to ask you why it isn't in there, but what I will ask you is, does DDM ask people purchasing opiates or controlled substances to provide a government ID at the pharmacy level?

A. No, we do not. It's not required. There's been some legislation at the state level that has looked at introducing that, but that's not presently a requirement.

Q. Okay.

A. And if there was a concern of a pharmacist that you're not who you think -- you know, there's a concern there that you're not the person who's picking this prescription up, if there's some type of -- something not right, they certainly can ask, but we did not make that a policy.

Q. Okay. And you do have familiarity with 5, that's the one we talked about. You had review that before, correct?

A. Parts -- pieces and parts.

Q. Do you remember going through it

and saying, "Okay. Wow, they have a government identification requirement. Is that something we should consider?"

MR. JOHNSON: Object for the record here and just make a continuing objection to these pharmacy or store-related issues, and I'll just state that on the record and you can continue on.

A. So what we do in that situation is, we do not ask for an identification of any sort. However, we will ask for another type of identifier. So if you were to pick up a prescription, typically you should know the birth month of the person that you're picking up. We do that for a variety of reasons. Not the date of birth. We need a birth month, okay?

And there should be also -- you should know the address. There might be some folks that don't know the address of who they're picking up for completely. "It's on Elm Street. I don't know the number." But we would expect that that requirement would be -- if not, then they involve the pharmacist at that particular

point.

Q. Okay. And my question is -- and perhaps I wasn't clear. Irrespective of this document, do you know if there was ever like a policy level discussion at DDM saying, "Should we require a government ID?"

A. That did come up, yeah.

Q. When did it come up?

A. I don't recall. I think it might have been -- there was -- again, I'm going to speak to some legislation that was in the Cincinnati area that was proposed by a diversion inspector who wanted to make it a mandate, and it didn't go through.

And so there was some discussion, should we, should we not. We actually spoke with some other pharmacy operators who we compete with with regard to what they were thinking at that time. And a decision was not -- was made not to.

Q. Do you know what your competitors were thinking? Did they tell you what they were thinking with respect to that?

A. You know, again, I think they

probably had similar concerns of, you know, okay, "So you're picking up" -- so are we documenting -- what are we doing with this information? So you're picking up for Tim Johnson a prescription."

"You know, so what am I doing with that information that's got your name -- I'm verifying who you are," but I'm not collecting that information, right? So there was, "How do we enforce this," you know. So we decided not to go ahead and implement a procedure like that. And I think those are concerns from some of the operators.

Q. Okay. So that was the reason DDM didn't implement that?

A. Yes.

Q. Okay. Now, going back to 6, which is the DDM document. I'm going to ask you to turn to page 13, which is at Bates number 91619.

And it's at the bottom of the page where it says, "Determining high risk prescribers."

Are you with me yet, sir?

A. High-risk patients?

Q. Prescribers. It's bottom half of the page, just under the bottom half. Here I'll show you.

A. Page 13?

MR. JOHNSON: Do you have the right exhibit? Page 13.

A. I'm on Exhibit 5.

Q. We're on 6 now. I'm sorry.

A. I'm sorry.

MR. JOHNSON: He switched.

Q. I'm going fast for you. It's my fault.

A. We'll get there. I'll just look up here.

Q. All right. And it says, "Determining high-risk prescribers." Are you familiar with the term of "high-risk prescribers"?

A. Yes, I am.

Q. What does that connote to you?

A. A prescriber that may be obviously writing prescriptions for unusually high number of controlled substances. Could be Schedule IIs. Could be a certain type of medications.

Q. Okay. And it has a list of bullet points on how to make that determination there. Now, again, since you're not familiar with this document, I'm not asking you to speak to the document. But do you know if DDM has implemented this in one of its many policies in terms of making that determination?

A. I mean, I believe that this is incorporated to some extent within our controlled substance quality assurance program.

Q. Okay.

A. Okay. And that's basically a red flag for filling, processing prescriptions for controls.

Q. All right. And then on the following -- well, at the very bottom of that page, it says, "Reporting patients and prescriptions -- and prescribers, a concern." And on the following page, last paragraph it states, "Pharmacists should report practitioners about whom they have substantiated concern to the Board of" --

A. I'm sorry. I'm lost here because it's not highlighting. Where is it at on page

14?

Q. It's the last full paragraph starting with "If a prescriber." Okay. But I'm reading the last sentence, okay?

A. Okay.

Q. "Pharmacists should report practitioners about whom they have substantiated concern to the Board of Pharmacy, Board of Medical Examiners and/or state DEA should be contacted after consulting with corporate pharmacy management."

Okay. Does DDM have a policy like that?

MR. JOHNSON: I'm going to reassert my continuing objection.

Go ahead.

A. I know that our pharmacists will contact state board inspectors and the state board. They don't -- and there are times that they don't contact us. They don't need to contact us.

So in that situation, if a pharmacist feels that a prescription -- or a physician -- there's a concern, they can contact

the State Board of Pharmacy. They don't necessarily need to go through us. And they typically will involve us, though.

Q. That was, in fact, my question, is why --

A. Yeah.

Q. So you're telling me -- I was going to ask why there is that requirement. You're telling me that requirement just simply does not exist?

A. Not that it has to come to us, no.

Q. Okay. Do you know if there's any policy anywhere that requires the pharmacist to come to you before making that contact?

A. Not to my knowledge.

Q. Sorry. Since you're not familiar with that document, that's kind of fast-forwarding some of my questions here.

All right. So pharmacists have the ability to report a high-risk prescriber, right?

A. Yes.

Q. Has that ever been done by a DDM pharmacist?

A. Oh, yeah. Yes.

Q. Do you know how many occasions?

A. I couldn't tell you. I mean, there have been times that they may contact us and let us know that, "I've got a concern about a doctor." In that situation, what we would typically do is we would contact the state board, deal with the inspector.

We may go down and talk a little bit further if we have a store that's nearby. Try to talk to the pharmacist there. Run some utilization reports off of that physician. There are times that the pharmacist may contact, just on their own, and do that route, too. That's happened as well, so ...

Q. To be clear, I'm not doubting your representation, but if you had to substantiate that on numerous occasions pharmacists did that, how would you do that?

A. I'm sorry. Repeat the question.

Q. Could you prove that? In other words, aside from -- you know, I -- aside from your belief that it happens, is there any way you could go about proving that, like, "Oh, here

are our -- here's reports we keep any time a pharmacist makes this" --

A. We had a pharmacist not too long ago that contacted us that had a concern, and he let us know that the physician was writing for what he thought was inappropriate amount of controlled substances. And so he contacted the physician, let us know that he contacted him. Told him not to send the patients to -- you know, to our store.

That precipitated the physician calling us back, and he was concerned about his reputation and said that he was not being investigated by anybody. And I don't remember the specifics of it, but it ended up being that that store would not process prescriptions for that -- the doctor wouldn't send them to us anymore.

Q. Okay. My question, is a record kept of that or anything to that nature?

A. There might be a file. I -- it didn't come to me directly, is what I'm saying. I was copied in an e-mail, put it that way.

Q. Has DDM been doing this for years?

A. Yeah.

Q. Now, handing you what will be marked as Plaintiff's 7 -- or Mr. Mulligan is, I should say. Starting at Bates number DDM 143260.

- - -

(DDM-Ratycz Exhibit 7 marked.)

- - -

Q. And I'll give you a chance to read it, but I want to represent for the record, this is an e-mail from Michael --

A. Michele.

Q. Michele, I'm sorry. I was more focused on the last name, which is -- how do you pronounce it?

A. Golob.

Q. Golob. I'm sorry. To you on 8/26/13.

All right. Are you familiar with this e-mail?

A. I remember -- yeah.

Q. Did you review it in your review of deposition material?

A. No, I did not.

Q. Okay. So what does it indicate that CVS Caremark is doing in the back of the e-mail, so to speak, just in --

A. They identified a list of prescribers and cut them off.

Q. Okay. And then you indicated that CVS was fined $6 million on -- kind of at the top, correct?

A. Evidently, yes.

Q. Okay. What was your belief that the fine was for?

A. I don't recall the specifics. I mean this is in 2013. So there might have been something -- there might have been -- this might be pointed to an article. Click here to read the story. It might even speak to that to some extent. I don't know.

Q. Okay. That's --

A. Obviously they were given a fine and they addressed it.

Q. All right. Did DDM make any effort to say, "Okay. CVS got this fine. We need to make sure we're not doing the same thing CVS did"?

A. We -- no. We didn't make any changes. We operated a little bit differently from the standpoint that I think that in many contexts where there's a Discount Drug Mart, there's not going to be another Discount Drug Mart two miles down the road.

So I think from their exposure -- and this is just me hypothetically -- you know, there could be a situation if you had a bad physician or group of bad physicians in a certain area, there would be multiple CVSs that would be affected, just because -- just basing that off of CVS and the model and how they sprawl, if you will.

Discount Drug Marts, that's not the case. Where I live, there's one in my community. There might not be another Drug Mart until maybe, you know, three cities over. So while we do have 74 locations, we're all over the state.

Q. Okay. And then after you note that they were fined $6 million and they had no choice, you go on to say, "As we develop our own internal CS monitoring program, we may be

encroaching on similar practices."

What similar practices?

A. This might be a decision where we may want to do some data mining on a physician, on a group of physicians, and do something similar. We continue to have those discussions, as a matter of fact, a couple months ago actually, regarding, you know, do we want to send notices or letters to physicians if we identify them?

Q. Okay. But this is something that CVS is doing now, though, apparently, right?

A. Yes.

Q. Okay. So -- and is the reason you're not doing what CVS is doing what you just told me about having two stores close together, is that --

A. I mean, we don't do everything that CVS does. And there's some things that we do that CVS doesn't either. So -- and I think sometimes the industry is that way. It's reactive.

I mean, you know, here we are in 2018, almost '19, and we're looking at doing

something similar, so ...

Q. Okay.

A. It might just be from our experience it was less -- less impactful from that standpoint.

Q. All right.

A. I don't know where those stores were in relation to that CVS. Maybe they were in Florida. We had a huge epidemic there in Florida. There are obviously issues in Ohio. Pockets here and there. So I don't -- there's probably more to that story on why they had to do what they did.

Q. Okay. I mean, CVS's policy that we're talking about is obviously aimed at trying to prevent diversions, correct?

A. Correct.

Q. All right. Was there ever any concern of saying, wait a minute, since we're not implementing this policy, diversions might be happening at our stores since we're not implementing a policy that CVS is?

A. We're small enough and we know our pharmacists very, very well. We -- no. If

there's a communication that -- there's not layers and layers and layers of communication before decision-making. And so, again, if somebody were to single out to us that there was a pill mill operating across the street, we would certainly take action on that from that perspective.

Now, could -- you know, we didn't data mine that, but we relied on feedback from our stores and it would work.

Q. So how -- I don't quite understand again how that works. So you -- because you know your pharmacists or pharmacies -- which is it?

A. Pharmacists, and our pharmacies.

Q. You would know that there's a pill mill across the street and you might be able to stop it, is that your --

A. No. What I'm trying to say is, is I think we know the -- we know our pharmacists and we know how they practice. And I think we're small enough. I think when you get to a large number of stores -- I don't know what that number is -- this type of instance, I think, is

probably necessary and it might be a better idea than for a smaller regional. That's all I'm saying.

Q. Okay. And I understand that. And I'm sorry, I have to keep going until I understand, but you'd agree that pill mills are a significant problem with the opioid crisis, right?

A. Yes.

Q. And that's -- in fact, that's what you identified as, I think correctly, as one of the issues here, right?

And what I -- the part I'm missing here is, how knowing your pharmacists would help you know that there's a pill mill across the street and that you need to do something? Do you see where the disconnect is?

A. Because they would communicate to us.

Q. Okay. So because you know your pharmacists, you know that the pharmacists would say, "Well there's a pill mill two towns over and that's -- and we need to stop that." Is that what you're saying?

A. Basically that's how it would work, yeah.

Q. Okay. How would the pharmacists know that something constitutes a pill mill?

A. Potentially they may see prescriptions coming in. And they're coming in and they're just not going to fill them, or they don't feel comfortable based on your controlled substances quality assurance program where there's too many red flags.

You've got patients that are coming in from, you know, four counties away and that's their address, or -- you know, there's certain red flags that could probably say, okay, we may have a physician who is prescribing an overabundance of controlled substances in that area. Pharmacists talk as well. That could be another thing.

Q. Why wouldn't that be true of a CVS pharmacist? Wouldn't a CVS pharmacist be able to make that same determination of, "Oh, no, we've got a pill mill across the street. We've got these red flags."

I mean, they -- I mean, I'm sure

your pharmacists are high quality, but presumably they have high-quality pharmacists too, right?

A. Potentially could. My -- just my -- again, my opinion is that there's a layering effect there. So who do you communicate that to? You communicate that to your DM. Where does it go from that point?

With us, it would communicate to us and we would act on it.

Q. Okay. So you're -- and I'm not trying -- I want you to clarify.

A. Sure.

Q. But you're thinking that same communication doesn't occur at CVS because of its size; is that it?

A. I think to a lesser extent maybe, yes.

Q. Going on to -- where are we at? Plaintiff's Exhibit 8? Yeah, 8.

- - -

(DDM-Ratycz Exhibit 8 marked.)

- - -

Q. Oh, I'm sorry. It's Bates numbers

169025.

A. Okay.

Q. All right. Are you familiar with this e-mail, sir?

A. I am now, yes.

Q. I see. I assume you haven't reviewed it recently?

A. No.

Q. Okay. And the sentence I'm interested in is, "We are in the final process of implementing a more aggressive controlled substance monitoring, handling, dispensing and reporting at the store level and corporate."

Okay. Are you with me so far?

A. Yes.

Q. Okay. What is more aggressive? I mean, with -- what was -- what was going to be more aggressive about what you were implementing as opposed to what you had implemented in the past?

MR. JOHNSON: So I'm going to assert my continuing objection to this.

A. So we were looking at possibly putting in a threshold limit. So instead of

encountering a fat finger or an order inventory on the report where we would never let you get to ordering 20. So an example, if you're ordering one a month or one two, one two, one two, and your average is one and a half or whatever, you would never get to the point of 10. We would put a quota in there -- a threshold in there that would just knock your order down to four or five or six.

Q. Because that would be the change, you'd just simply not allow that to happen?

A. Yes. Instead of having it go to -- you know, to somebody to make a determination or pick up the phone to kind of reduce some of the noise if it happens, so ...

Q. Okay. And that would be at corporate level as well, so I mean, that would certainly affect the corporate level?

A. Yes.

Q. Anything else that this more -- quote, more aggressive policy that you're referring to?

A. No, no.

Q. Do you know when this more

aggressive policy was eventually implemented?

A. It was not implemented. I don't recall -- I don't know if I ever got anything back from Scott in regards to that, into the methodology, and if I'm -- I don't know. I -- there might be an e-mail there. I don't know if you collected it or not. But it seems like Scott's approach or -- from a DEA's interpretation, was -- it was up to the company to make up their own -- you know, their own algorithms, if you will, to designate -- you know, to make the reporting better and that was up to, you know, up to the company.

Q. I see. Who is Scott?

A. Scott Brinks was a -- he worked at the Cleveland office DEA. So we had a good relationship with him.

Q. Do you know if you ever specifically said, "This is our suspicious monitoring policy" to Scott?

A. At one particular -- not in this realm. I mean, we might have had conversations about what we do. I don't know.

Q. Okay. But to your knowledge, you

don't recall having that conversation with him?

A. No, I don't -- I don't know. That might have been brought up not with Scott, but could have been brought up with somebody else when they did a -- you know, when they did their inspection every two years. I --

Q. Do you know if it was ever?

A. I don't know.

Q. Going on to Plaintiff's 9, Bates number DDM 75738.

- - -

(DDM-Ratycz Exhibit 9 marked.)

- - -

A. Okay.

Q. All right. Thank you.

MR. JOHNSON: I'm renewing my continuing objection here.

MR. HAWKINS: Thank you.

BY MR. HAWKINS:

Q. First sentence is what I'm interested in. "I would like to see us have a code of conduct in controlled substance QA program."

What is a QA -- controlled

substance QA program?

A. Controlled substance QA program is a program where it allows -- it provides -- you know, when you get a prescription, it's a tool that the pharmacist can use to make sure that we're not filling a prescription that might be not indicated for legitimate medical purposes or it's coming from a pill mill or what have you. So more consistency to when we're saying, no, versus when we're processing and vice versa.

Q. Okay. By not having that program, could that give DDM the knowledge that diversions are more likely to happen with respect to its stores?

MR. JOHNSON: Objection.

A. Not having the program?

Q. Yeah, in the absence of such a program. I mean, it indicates there's currently no program in place. Might that give DDM an awareness that, you know, there are more likely to be diversions happening within our stores, the stores that we're shipping this material to?

MR. JOHNSON: Objection.

A. Yes.

- - -

(DDM-Ratycz Exhibit 10 marked.)

- - -

Q. Now, handing you what will be marked as 10 -- or Mr. Mulligan will, I should say, and it is DDM 12909.

Now, if you want, you can read the whole document. I'm just going to ask you one direct -- so it's up to you if you -- do you want to read the whole document or --

A. No, I don't need to.

Q. Okay. First of all, do you know what this document is?

A. Yes, this is our controlled substance quality assurance procedure.

Q. Okay. So this is --

A. Policy.

Q. This is what was eventually implemented from -- in reference to that last e-mail; is that fair?

A. Yes.

Q. Okay. So when did this policy initially -- when did this -- the implementation -- kind of when was it nascent

stages, I guess, for lack of a better term. When did it start -- when DDM start developing this program?

A. We always had pieces and parts of this program in play. What we didn't have was consistency. And when I say "consistency," was that pharmacists are going to be -- and I don't want to say this in a negative way, but a pharmacist, when we have our state board come in, we have the DEA come in and they talk about diversion, they talk about, you know, filling prescriptions. Most pharmacists are going to look at a controlled substance prescription and they're going to look at it many different ways.

And there is a reluctance in many instances to fill that prescription. Unfortunately. And I say only unfortunately when it's written for legitimate medical purposes, okay?

And there's a reluctance because they're licensed. They're afraid they're going to lose their license potentially, right? And so we wanted to provide them some guidance on going through the right -- you know, the right

circumstances to fill a prescription.

And at the same time, identify if there was situations where you shouldn't be filling a prescription even though it looked like it might be okay, to provide them guidance to say, "No, you shouldn't fill this prescription, because, as a reminder, the patient doesn't live in your community and keeps coming back to you, or doesn't have an ICD code attached to it, or the physician was reluctant to provide additional commentary or information on treatment" and so on and so forth.

So to answer your question, pieces and parts of this was being done at our stores. We found it necessary to go ahead, put it together, so that it would be a resource for our stores and so that we can now document that it was being done as well.

Q. I see. Okay. The part I'm most -- I mean, you talked about the reluctance of the pharmacists. Can you describe that -- I don't understand.

A. I'm sorry. And when I say "the reluctance," I only mean that from a standpoint

that a pharmacist is going to get paid a salary. It's not, you know, Tim Johnson Drugs and Tim's the pharmacist. So there's no incentive monetarily to process controlled substances and look the other way and fill these prescriptions, okay? There's none.

They're going to collect their -- you know, we didn't have a bonus structure that was tied to controlled substances or anything. There's no incentive, okay, for that pharmacist to fill a prescription. That's all I meant by that.

Q. Okay. Well --

A. Not that their --

THE COURT REPORTER: Can we go off the record?

MR. HAWKINS: Sure.

THE VIDEOGRAPHER: Time is now 11:48. Going off the record.

- - -

Thereupon, at 11:48 a.m. a luncheon recess was taken until 12:23 p.m.

- - -

Friday Afternoon Session
December 21, 2018
12:23 p.m.

- - -

THE VIDEOGRAPHER: Okay. The time is now 12:23. Back on the record.

BY MR. HAWKINS:

Q. All right, Mr. Ratycz, before we broke for lunch, we were talking about reluctance of the pharmacist, do you recall that? And one of the things you used to explain the concept you were getting at was the bonus structure. Do you recall that?

A. Yes. I was just trying to make a point that, we don't incentivize our pharmacists from that perspective of filling, you know, controlled substances. Within -- our bonus parameters have changed over the years, obviously, as the pharmacy profession has changed.

But over the course of even when we go back in time, there was different factors, you know, perhaps pharmacy sales, which was a small component, and script count was a small component. Ultimately payroll and inventory

control and other things have always been at the top.

And even if we look at our pharmacy structure today, only 3 percent is tied to prescription growth. That's just prescription growth. And obviously controlled substances are a small piece of that. And that's -- so 3 percent of your bonus. The rest of the parameters are all about patient-centered services.

So there isn't incentive enough. I mean, and, again, our bonuses aren't -- we're not talking about bonuses for chief pharmacists that are $25,000 at the end of the year. I mean, our bonuses will range anywhere from $500 to as high as $4000. And even the 4000s might be just one or two pharmacists.

Q. Okay. So a lot to breakdown there. You said pharmacy sales are only 3 percent of the bonus structure?

A. Pharmacy sales today aren't included in that.

Q. Are not included?

A. No, they're not. It's script

count. So just prescription count.

Q. Prescription count is included?

A. Yes.

Q. Okay. How do -- explain how prescription count works --

A. So we just have a minimum requirement that you be over like a two and a half percent threshold of growth to be eligible for that component of the 3 percent. So if you get a 2.5 percent prescription growth, you would then be eligible for 3 percent of that bonus. You would have just met that requirement.

Q. Okay. So if you get more than 2.5 percent growth, you get a 3 percent bonus?

A. No. Your bonus calculation at total --

Q. Yes.

A. -- the 2 and a half percent increase on the script side, 3 percent would be representative of your bonus dollars.

Q. I'm sorry. I went to law school to avoid math.

A. Yeah. What we'll have -- maybe it's something -- I'm probably bad at

communicating that. So we will have, for example, script count will be 3 percent. Payroll might be 20 percent. And you'll add it up until you get to 100.

Q. I see. So, I mean, I guess why I'm a bit confused is -- I mean, 3 percent seems so picky in that it's as if -- like, for instance a $500 bonus, 3 percent would be what? About $24 -- I mean $15?

A. Right.

Q. So that's -- we're talking about $15 here? That's --

A. It's not a big -- yeah, it's not a big piece.

Q. I see.

A. If our -- if you look at our pharmacists' bonus structure today, it's off immunization. It's about medication therapy management, it's about inventory management, customer service, and there might be -- there might be some other things that are tied to patient services.

Q. How's customer service measured?

A. Customer service is measured by --

it's a number of ways, customer complaints, compliments. We have the ability to throw out a complaint. So if somebody says -- you know, if we determine that the complaint was not really truly legitimate, then we're not going to ding the store, so we remove that.

So you get -- for a customer compliment you'll get a couple points. Negative, minus one for a complaint. There's other metrics that we incorporate into customer service. That's any feedback that we get through social media or anything else is also embedded in that.

Q. And again, I'm not doubting the accuracy of your testimony. I just want to make sure, because it's sounds almost incomprehensible to me that -- your testimony is that 3 percent of a pharmacist bonus is script sales and that's it?

A. Script count.

Q. Script count.

A. Script count.

Q. Which is, I assume, somewhat related to sales, yes?

A. Yes.

Q. And nothing else related to sales affects the bonus?

A. No. We used to have a small percentage was tied to pharmacy sales. Again, it might be 3 percent was prescription growth and 3 percent was sales. So that would give you exposure of 6 on those, but we removed the pharmacy sales piece because we were trying to move the needle in other ways with regard to patients services and, you know, stuff like that.

So we felt imperative that that bonus already -- is it big bonus? That we want it really tied to things that matter. Flu shots, just as an example.

Q. Out of morbid curiosity, has anyone said that, you know, "Why are we even messing with 3 percent? Why don't we just get rid of this altogether? No one cares about $15."

A. It probably will be gone, yeah. We'll probably incorporate something here soon. We make changes to it ongoing, so ...

Q. And it seems like it's more a problem to administer than you would get any use --

A. Script count is still important, I think, so you don't -- it's like one of those things you probably want out there so if you have a store that's actively growing and they're at 5 percent growth, and not to have it on a bonus as a parameter that's being measured, that could potentially be a negative conversation with that pharmacist, but ...

Q. How can the pharmacist affect script count?

A. It's a good question. I think that's really, really tied to everything else that we do within that bonus in that customer service. Good physician relationship, physician -- some of our pharmacists will actually go out to physicians' offices, and we have a generic prescription program so they'll provide some brochures to a physician's office to let them know.

So I mean there might be some -- and those circumstances aren't very, very

common. They might be more typical in, you know, rural pharmacies than you would have here in Northeast Ohio, but, yeah, I don't think they really impact it too much at all.

Q. Perhaps it's because I'm from the framework of usually suing them, but have you ever observed that doctors kind of stick together, they're a bit of a -- they're kind of a tight-knit community. Is that fair from the pharmacy perspective, too, or --

A. I'm married to one, so yes.

Q. Well, there you go.

Is there ever a concern -- I mean, do you think there's a concern there for a pharmacist that, you know, if I turn in this physician, if I bar this physician from writing prescriptions, that, you know, you're not only losing the business of that physician, but, you know, other physicians often kind of -- is there ever that concern with --

A. I don't think that concern. There's that concern I think if you had a physician who was practicing medicine in a correct way and potentially he had a rare

circumstance where he had a patient in a certain condition that maybe warranted high opiate therapy or something along those lines, but his business practice or his patient clientele was, you know -- let's say he was internal medicine and they were legitimate, he was treating hypertension, diabetes, and he had a patient who looked like a perceived outlier, that -- maybe in that situation, yeah, if a pharmacy didn't want to fill that prescription.

And I'm going to base it on the premise that that prescription was legitimate, okay, that patient needed it, but maybe they thought there was a potential red flag that they didn't fill it, that could maybe alienate that physician and he may say, "Well, I'm not going to send you these prescriptions."

Q. Fair to say physicians don't like being told they're practicing medicine incorrectly, right?

A. True, true. Now, if you had somebody who was overprescribing opiates or controlled substances, I don't know who -- and he may talk to another overprescribing opiate

physician, if he knew of another physician that maybe -- I don't know. You know, that potentially could be a conflict, but those are probably prescriptions you wouldn't want unless it was quote/unquote a legitimate pain management facility that was licensed by the board and being maintained by it, and those exist out there.

Q. How do you tell the difference?

A. There's a -- you can contact the state board -- you have to have a certain license with pain management, and that allows them an ability to distinguish versus --

THE VIDEOGRAPHER: Counsel on the phone, could you put your phone on mute please. I think we can hear your feedback.

A. Versus a designation of, let's say you're an endocrinologist and now you're treating pain and you keep seeing pain.

Now, conversely there have been pain management docs that have gone awry and been bad as well. So there's always that. But the state board has gotten better at labeling

pain management clinics as such, so ...

Q. And earlier, you know, we were talking about, you know, kind of the close relationship and how the pharmacists on the ground -- you know, the close relationship between DDM and its pharmacists allows you to kind of prevent diversions that way. How can those pharmacists make that determination of, you know, the legitimate pain management clinics? I mean, because what you're telling me is kind of fine-tuned a bit.

A. I think that's -- part of this, I think, helps -- this policy helps with that.

MR. JOHNSON: Exhibit 10?

A. I'm sorry.

Q. Sure. No, no. That's a good point.

A. That's Exhibit 10, and that's the controlled substance quality assurance, because it allows them to, again, identify where those red flags are and where there's issues.

Q. Okay. So that policy gives them a bunch of tools that they can use to make those determinations, and that's how they might make

that. What did they have before that policy?

A. They had pieces and parts of that policy, so ...

Q. But fair to say this policy didn't exist before 2015?

MR. JOHNSON: Objection.

A. No. It did not exist as it is today. There were pieces -- there were parts that we were being done. What we tried to do was provide them one area and a policy where they would go in. And actually, when they complete some of these forms, if you look at the policy in its entirety, there's pieces here like a tier one red flag resolution piece. Well, a tier one is pretty substantial.

It means we've got -- this is really not a very good prescription, so tell me why I can fill it, why you should fill it, if you're the pharmacist. So that requires you to complete that. And what that does is that allows us to then scan it in our pharmacy system so then if another pharmacist comes in and has a question, they can kind of look at this as well. So ...

Q. I'm sorry. Am I interrupting you?
A. Yes.
Q. Before September 9, 2015, where would the pharmacists go to look for that tier one thing you referred to that's in here?
A. They -- the tier one did not exist. So they wouldn't have that.
Q. That's one benefit --
A. That's a benefit, yes.
Q. Okay. So they'd have that benefit at 2015 onwards --
A. Yes.
Q. -- but not before?
It's fair to say there are other benefits like that that are in here now that weren't in there -- that did not exist before 2015?
A. There might be some.
Q. Can you think of any?
A. I'd have to read it.
Q. I'm not going to do that to you.
All right. We're to Plaintiff's 11. Mr. Mulligan will be handing --
MR. MULLIGAN: 12.

MR. HAWKINS: Is it 12?

MR. MULLIGAN: I'm sorry. 11. My bad.

- - -

(DDM-Ratycz Exhibit 11 marked.)

- - -

BY MR. HAWKINS:

Q. Do you need time to review this, sir? I'm going to go over individual sentences, so ...

A. If you're going over individual sentences, I'll go that way.

Q. Have you seen this document before today?

A. I may have.

Q. Did you review it in preparation for your deposition today?

A. No, I did not.

Q. Okay. You said you read Mr. Briscoe's deposition, correct?

A. Correct.

Q. And this document was discussed a good deal in that deposition, right?

A. Then I've seen that, so ...

Q. Okay.

A. I thought it was a different date for some reason.

Q. I was going to make that clarification. I'll represent there are documents like this.

A. Okay.

Q. There are similar documents, but kind of the same focus, so to speak.

So you -- perhaps in Mr. Briscoe's deposition -- have you ever encountered this document professionally as an employee of DDM?

A. I may have, yes.

Q. Okay. And part of your job duties and responsibilities is to get documents like these and say, "Okay, this is what we need to do," correct?

A. Correct.

Q. Okay. So on the first page of the document --

MR. JOHNSON: I just want to point out, there's multiple documents in this -- in this exhibit.

MR. HAWKINS: There are?

MR. JOHNSON: Well, I see a letter dated December 27th, 2007, a letter dated February 7, 2007, and a letter dated September 27, 2006.

MR. HAWKINS: I should dock my paralegal her bonus, but I don't know why that is. It's the -- thank you for that clarification.

MR. JOHNSON: I'm not trying to mess up your paralegal's bonus, but there are three of them together.

MR. HAWKINS: In fact, if you could, at least for the operative exhibit, do you mind taking -- the first two pages --

MR. JOHNSON: You didn't intend that?

MR. HAWKINS: Exactly. I don't know why it's there. I don't know what happened.

MR. JOHNSON: Okay.

MR. HAWKINS: But the one thing I do know is this is the only -- the two pages of December 27 is the only thing

I'm interested in.

BY MR. HAWKINS:

Q. So do you recall if, as an employee -- not in preparation of litigation or anything -- of DDM who reviews documents like this, if you ever reviewed this document or one like it?

A. I may have. I mean, one thing -- I mean, in reading the first paragraph, it seems as if this letter is being sent to every entity in the U.S. registered with the DEA, okay. So it's safe to say that that went to Discount Drug Mart. I just don't know to whose attention.

Now, I could tell you that in 2007, I don't believe I was signing off on our DEA license. So I'm just saying that this may -- I don't know how this came.

Q. Sure.

A. It could have came to the attention of that person whose name it was, and I may not have seen it, or it could have been we made copies and it did come to me. I don't know.

Q. I appreciate that. And to be

clear, I'm not asking for precision. I'm just asking what you remember.

A. Okay.

Q. If it wasn't you, it would likely be Mr. Nameth, correct?

A. Yes.

Q. Okay. And in fact, I think earlier you seemed to testify that, you know, this end kind of was more on Mr. Nameth's bailiwick, correct?

A. Correct.

Q. So he might be the more appropriate individual to have memory of this document?

A. Perhaps, yes.

Q. Perhaps, okay. Thank you.

Directing your attention to the third full paragraph starting with "The regulation." Are you with me so far?

A. Yes.

Q. All right. "The regulation also requires that the registrant inform the local DEA division office of suspicious orders when discovered by the registrant."

How do you interpret that?

MR. JOHNSON: Objection.

A. I mean, just what it says there, that if there is a suspicious order, that we should notify the DEA.

Q. Okay. Then the next -- two sentences down it says, "Registrants must conduct an independent analysis of suspicious orders prior to completing a sale to determine whether the controlled substances are likely to be diverted from legitimate channels."

How does DDM do that?

A. We currently have a process right now where we -- again, going back to our reports, but if you want to focus on the -- we have the six-week average, and then we have the rolling 12-month report. And anything that shows up as a -- you know, on that report at that particular point is considered an anomaly, so there might be -- this requires human invention in terms of looking at it, challenging, trying to figure out why that number is where it's at.

We talked about before, maybe it's

a product where, you know, we're bringing into our warehouse now. So there's volume, or it could be a variety of reasons. We could be -- it could be as simple as a -- we're in a new network that we weren't before and our competition is not in that network and now we have a bunch of lives that are migrating to our store. That could create a lift.

So there's a variety of things. So we would go ahead through that. Again, if we could not resolve the oddity at hand, we would then go ahead and send that form. And that form would be completed by a pharmacist with regard to trying to explain why that number resides where it is.

And based on the pharmacist's answer, there would be a determination at that particular point if we had a suspicious order. That was our interpretation.

Q. Okay. Please turn to the second page. I'll read you the second sentence from the top. "For example, a system that identifies orders as suspicious only if the total amount of a controlled substance ordered during one month

exceeds the amount ordered the previous month by a certain percentage or more is insufficient."

Why is the system that you just described for me not insufficient under that interpretation?

MR. JOHNSON: Objection.

A. If you're referring then to the six-week average, that could probably be a situation where, okay, that statement may be tied to that. Again, that wasn't our only -- part of our SOMS program. That was another spoke that we had, another set of eyes on the drugs both at the store level and at the distribution center.

But what we used was a rolling 12-month average, and I think -- if I'm -- the way I read this -- again, I could be wrong -- is that it's a month-to-month comparison. We were at least using a 12-month comparison to identify an outlier.

Q. Okay. So you're saying because it's 12 months instead of a single month?

A. Yes. And, again, that, at the end of the day, wasn't the only thing that, you

know -- I mean, we were still the human piece that would determine whether it was suspicious or not.

Q. The human piece?

A. Well, just evaluation of the data. Pharmacists then going in -- Jason or Tom going in to run reports, trying to recuse that it's -- that it's not an anomaly but a suspicious order so ...

Q. And earlier remember we talked about the contrast between the six-week and the 12-month cycle, and you agreed with me that the 12-month cycle is retroactive as opposed to proactive, right? And that's accurate testimony?

A. Yes.

MR. JOHNSON: Objection.

Q. Thank you.

We're at 12, which I'm sorry I forgot. DDM -- Bates number DDM 440510. Let me know when you think you're ready to answer questions about this document, sir.

A. Okay.

- - -

(DDM-Ratycz Exhibit 12 marked.)

- - -

BY MR. HAWKINS:

Q. Are you ready? Now, if you remember, towards the beginning of this deposition, I even -- I showed you a document and this is the kind of document I showed you, correct?

A. Yes.

Q. Okay. At the front of this document, it says, "The DEA has requested that Discount Drug Mart pharmacy operations maintains records of controlled substances, purchases that exceed an average of purchases calculated from the previous 12 months or that deviate substantially from national average per month."

First of all, where has -- when has the DEA told DDM that?

A. Again, I would defer to Tom in that situation only because I think of when this form was developed was before I was moved up. I would actually complete these at store level. So it was before my time. So I don't know if there was dialogue with the DEA at that

particular point, and I can't speak to that.

Q. So tell me if I'm misstating your testimony. So it's possible it may exist, you just don't know where it exists?

A. I'm sorry. I must have misunderstood.

Q. The background for -- the DEA --

A. Oh, yes.

Q. It's possible that the DEA gave a directive like that. But as you sit here today, you don't know where that directive came from?

A. Correct.

Q. All right. Thank you.

And then it says, "That deviate substantially from the national average."

How does DDM take the national average into account for monitoring suspicious orders?

A. We don't have a national average.

Q. Okay. So here it says the DEA requires that you do that, right?

A. Yes.

Q. All right. And you don't, right?

A. Yes.

Q. Now, what is the drug that is listed on here?
A. This is hydrocodone.
Q. And I know -- what kind of family of drugs is that?
A. This would be probably a Schedule IV. I mean, it's a hydrocodone/acetaminophen combination product like a Vicodin.
Q. Fair to say it's a controlled substance?
A. Oh, I'm sorry. Yes.
Q. Sorry. All right. And then it lists the average monthly purchase, and then it says the bottles that were ordered, correct?
A. Yes.
Q. You have any -- I mean, what percentage increase would you estimate that to be?
A. It's a big increase.
Q. It's 400 percent? I'm --
A. Yes.
Q. Like I said, math is not my --
A. Mine either, but yes.

Q. All right. So we described this process, okay, you -- something is flagged, which is, this is what happened, right?

A. Mm-hmm.

Q. Okay. And then it kind of goes up the chain, and then a pharmacist gets an explanation. Are we on the same page so far?

A. Mm-hmm, yes.

Q. And that's what happened here?

MR. JOHNSON: He's saying "mm-hmm" I was just going to correct -- remind him it's better to say yes or no.

A. Yes.

Q. All right. Can you explain this explanation to me?

A. It sounds like -- it sounds like patients are switching to a lower dose Tylenol. So this physician who is writing, and so hence what was 3.1 is now increased, because he's going to a low dose Tylenol formulation.

Q. Okay. But to me if you're going to a low dose Tylenol, that means less of the order, correct, rather than more, right?

A. Oh, no, not really. Typically the

dosage would stay the same. Dosage units would stay the same.

Q. Can you -- I'm sure you're right. I just -- please explain this to me.

A. Oh. So, again, I think this speaks to the issue of Tylenol. So there was worry about Tylenol toxicity by the FDA, so it required that some of the hydrocodone formulations -- this obviously occurred before that FDA requirement to reformulate products with lower acetaminophen.

As I read this, his patients are switching to low dose Tylenol formulations. So the hydrocodone content might be the same, but the acetaminophen component is less.

Q. And hydrocodone is in Tylenol?

A. Hydrocodone is the -- no. That's the control.

Q. That's the control.

A. Yes.

Q. Can you -- I mean, I think I understand but can you break it down just for --

A. Right. So I'm sorry. This drug contains 7 and a half milligrams of hydrocodone

and 500 milligrams of acetaminophen.

Q. I see. So the explanation is because of the change in the Tylenol structure, that there are more units ordered?

A. I don't think it would be more units because what would -- the dose -- so, in other words, if you were taking one tablet three times a day of the old formulation, and we switched you to the low dose, you would take one -- you could take one a little bit more or you would still take the same amount.

Q. All right. And that's -- therein lies my confusion, because I think I understand what you're saying, and what I don't understand is how that can explain for a 400 percent increase?

A. Again, I didn't do the -- I'd have to look at this more and maybe run more -- there could have been more reports that were run.

Q. All right. But you would agree that there's at least another explanation that is required from this?

A. Well, I mean, I -- it says here that the patients are switching to a lower

dose -- I mean, so part of that makes sense.

Q. But the 400 percent -- I mean, from your explanation of you might be an extra tablet, there's got to be more math there somewhere to explain that, you would agree, correct?

A. Perhaps.

Q. Can you think of another explanation, besides not more math?

A. Again, I didn't run this. I didn't work this report, so --

Q. All right. Well, let's just break that down. You don't -- I agree you didn't write this report, but you --

A. No. I'm just saying I didn't work the report in terms of me working it on a daily -- on a monthly basis to a point where I had a system in place, me personally.

Q. Correct.

A. So I can't speak to that entire process as far as the exceptions or what additional they might have done or to how this was filled, or how it was determined that it was not suspicious.

Q. But these type of documents are something that you're used to working with, correct?

A. I've seen them before, yes.

Q. And you're used to interpreting them?

A. No, no. Not this specific one, I didn't interpret. I interpreted one where we had the increase in a medication that I talked about. Yeah, I remember that.

Q. Okay. But you're used to having documents like this, doing the follow-through and kind of supervising this process, right?

A. I don't understand the question. You're asking me if I used these forms. No, I did not. Am I aware of them? Yes.

I'm not sure if I understand the question, I guess.

Q. Sure. I'm seeing if I can break it down in a manner that -- my understanding is -- and perhaps I misunderstood your testimony -- is you're part of the supervisory process for these forms. When a suspicious order is potentially identified, these forms are

filled out and you're part of the process in which these forms are created?

A. I could be, yes.

Q. Okay. And occasionally, as part of the process in that, you see these forms, correct?

A. I may if it's brought to my attention.

Q. You recall seeing these forms in the past, correct?

A. I've seen these forms.

Q. Okay. And to see them and to exercise some supervisory control over them, you have to have an idea how they work, right?

A. Yes.

Q. Okay. Now, I'm now handing you what is marked as Plaintiff's 13.

- - -

(DDM-Ratycz Exhibit 13 marked.)

- -

Q. Oh, I'm sorry, Bates number 440512. And obviously you can be more precise in this, but this -- right here we've got a greater than 500 percent increase, correct?

A. Correct.

Q. Okay. Can you explain the explanation from this?

A. No, I cannot.

Q. Do you know who might be able to?

A. This would have been -- this would have been Tom.

Q. And at the very -- there might be an explanation for this, but you can't determine what the explanation is from this form; is that accurate?

A. Yes.

Q. Okay. So if you came across this in your supervisory control -- like "Someone's got a complaint about this one, we're worried about it."

How would you go about resolving, you know, what the explanation is here?

A. I would sit down with Tom, yeah. Or Jason.

Q. And I understand clerical deficiencies happen, but are physicians -- pharmacists expected to clearly state what the explanation is on these forms?

A. They should, yes.

- - -

(DDM-Ratycz Exhibit 14 marked.)

- - -

Q. We're at Plaintiff's 14. DDM440516 is the Bates number.

Now, the language on here is hard to write [sic]. But if you can, try to read it to yourself and let me know if ...

Did you complete it?

A. Yeah.

Q. All right. Again, we've got a 500 percent increase here that obviously exceeds the monthly average. And what I see here is spike in prescriptions filled is the first sentence. Do you agree with me? The handwriting is not terribly good, but I'm pretty sure that's what it says.

Do you agree?

A. Yes.

Q. Isn't that the whole point?

A. Excuse me?

Q. Isn't that the whole point of why -- I mean, a spike in prescriptions filled,

that's the whole point of a suspicious order to begin with. I mean, that's -- that's what it -- that's what this process is designed to catch, correct?

MR. JOHNSON: Objection.

A. If you can justify why it's spiked, then I would say no. For example, if you had a situation where you had a new pharmacy -- or excuse me -- a new physician that opened up next door, or you had a pharmacy that closed down, or you had new patients, new lives coming from a plan that you didn't have before, you would see a spike in prescriptions filled, you would be able to determine that that anomaly or that spike is not suspicious in that nature.

Q. Okay. Do you see that -- you read the report. Do you see that on there as an explanation?

A. No, I do not. But I did not complete this, so there might be more to that story.

Q. Okay. There might be. And there might be a benign explanation.

A. Yes.

Q. But fair to say it's, at the very least, not on here, correct?

A. Yes.

Q. And it's fair to say spike in prescriptions filled is definitely not an excuse, right?

A. Correct.

- - -

(DDM-Ratycz Exhibit 15 marked.)

- - -

Q. We are at 15, I think, and Bates number 440405.

You know what? Have you ever seen this document before?

A. Am I on the right one? I'm on 15, right?

Q. Correct.

A. I have -- I've not seen this one.

Q. I'll ask you one question. That will probably do it. Can you read the handwriting?

A. I can't. I was just going to say I was looking at the screen and looking on this.

Q. We'll just skip to the next one. Let's go to 16.

- - -

(DDM-Ratycz Exhibit 16 marked.)

- - -

Q. And we're at DDM440505.

Have you ever seen this document before, sir?

A. Yes, I did.

Q. Tell me the context in which you saw it.

A. I saw it during -- through Jason Briscoe's deposition.

Q. Okay. Had you seen it before that time?

A. No.

Q. Okay. And you read the colloquy about that during the deposition, too, as well, correct?

A. Yes.

Q. All right. You'd agree it's just under a 400 percent increase?

A. Yes.

Q. Okay. And what's the explanation

given here?

A. You had two or three large prescriptions for larger amounts than usual. Quantities were verified with physician.

Q. Okay. Is that an explanation that's satisfactory?

A. It could be, yes.

Q. I see. Earlier we talked about problematic physicians that, you know, some overprescribed. How do we know the physician isn't one of those --

A. I don't know that. However, I'm going to make the assumption that when Tom did his diligence on this, he ran a report, looked at the physician. And I could tell you that the pharmacist that's been there -- the pharmacist that worked for us for 40-plus years and had a very good reputation with us. So maybe that's a little bit of knowing our customer from that perspective may help, but I would -- but definitely we would need to look at the physician before we could make that determination.

Q. So at the very least, there would

have to be some kind of effort to determine what physician we're dealing with?

A. I would think so, yes.

Q. Thank you.

- - -

(DDM-Ratycz Exhibit 17 marked.)

- - -

Q. All right. Mr. Mulligan will now be handing you Plaintiff's 17.

I'll give you a chance to review it. But before you do, have you seen this before?

A. Yes.

Q. Okay. I'll let you review it. Let me know when you're done with your review.

Bates number -- can you tell me the Bates number?

A. Actually, I don't know if I saw this one. I probably did, yeah. But let me read it, if you don't mind.

MR. HAWKINS: Could you read the Bates number? My Bates number is --

MR. JOHNSON: Yes. It's DDM00178756.

MR. HAWKINS: Thank you.

BY MR. HAWKINS:

Q. And you can read the whole part if you want. I'll tell you right now the only thing I'm going to direct you to is the nature of the presentation, the person on the e-mail chain, and on page 3, the part about the opioids. But please feel free to read the whole document if you prefer.

A. If you want to direct me there, I'll kind of work that way --

Q. Sure.

A. -- versus reading. There's a lot here to read, so ...

Q. Sure. Whatever you want to do. I'm just trying to help you.

Do you see the highlighted part?

A. And it's on page --

Q. 3, the third page of the --

A. Okay.

Okay.

Q. Okay. Earlier you indicated you thought you had seen this before. Is that accurate?

A. I may have, yes.

Q. Do you recall the context in which you saw it?

A. No, I don't.

Q. Okay. Was it in relation to this litigation?

A. No.

Q. Okay.

A. No, it was not.

Q. So you likely saw it in your capacity as a DDM employee?

A. Yes.

Q. And this is an e-mail that was to Mr. McConnell who's here with us today, correct?

A. Yes.

Q. And on the first page, it says, "McKesson Investor Presentation."

A. Yes.

Q. Can you -- do you have any idea what that is?

A. I assume that's to their shareholders potentially, and I think the individual that sent this is basically somebody who sits on those calls, listens, and takes

notes from any of the key players in the pharmacy industry, so ...

Q. And then directing yourself to the Opioids, it says, "Over the" -- I'm sorry. Are you there?

A. Yes.

Q. "Over the last couple years, we have reported hundreds of thousands of suspicious orders and customers."

It's reasonable to assume reported means to the DEA?

MR. JOHNSON: Objection.

A. Yes, I would think so.

Q. Okay. How many reports has DDM made to the DEA?

A. We have not made any. We have not had a suspicious order.

Q. Okay. When you reviewed this e-mail, did you say, "Well, wait a minute. Hundreds of thousands reported. We haven't reviewed any. Is there a discrepancy there or" -- did you have any thought like that?

A. No. That's assuming I even read this. But from a standpoint of reading it now,

McKesson is ginormous. They're large. So, I mean, when they're reporting hundreds of thousands suspicious orders, I don't know who their customers are. Okay. I can only speak about Discount Drug Mart with 74 stores, and I can only speak about that. So that number -- I'm not shocked. I know McKesson is very, very large in the wholesale world and has tons of customers.

Q. Okay. McKesson aside, I mean, you do have 74, right?

A. Yes.

Q. Do you find it remarkable that not -- with 74, that not once there was something suspicious about a sale? I mean, can you explain that to me?

MR. JOHNSON: Objection.

A. We had anomalies, and we had evidently taken those anomalies and run them through the process and felt comfortable that they were not suspicious orders.

Again, if you point to our distribution center, we -- I mean, we were pulling from multiple sources, from Cardinal or

from whoever our wholesaler was at that time. We weren't just -- all our controlled drugs weren't coming out of our pharmacy warehouse.

So -- and, again, I speak to the fact that it's about knowing your customer. It's about, you know, making sure they have a DEA number, making sure that they -- they're practicing pharmacy correctly, and so on and so forth.

From a wholesaler perspective, that is extremely difficult to do. At the end of the day, all they know is an address, okay, and the dispensing data that they may have. They have no idea where that pharmacy is, what's around it, and so on and so forth.

So from that standpoint, that's why I would think that we would probably have a lesser amount, significantly lesser, if any at all, suspicious orders.

Q. Okay. I mean, you would agree, though, there's nothing about people who abuse opioids that would make them go to CVS as opposed to DDM, correct?

A. I'd say that's true.

Q. Okay. Now, I don't want to mischaracterize your testimony, but a bit earlier you said, "You know, a lot of the drugs we get from Cardinal and other distributors."

Do you remember that just like a minute ago?

A. Yeah.

Q. Can you explain the relevancy of that?

A. I'm just saying that, you know, we're -- we're not pulling -- we're pulling a small portion of our controls through our DC, and we're pulling another portion through the wholesaler.

So, I mean, just to do basic math on 60 stores over a ten-year period, we deliver to our stores once a week, okay? Wholesaler, we have five-day delivery.

So in that context, you're going to have 150-, 160,000 deliveries to the stores potentially going suspicious. I don't know. But we have far less orders is what I'm saying going out.

And I think there's less SKUs that

are going out from a control perspective. So I think when you're making that comparison, it's not entirely apples to apples.

Q. I see. And the comparison that I'm making is? What comparison is not apples to apples?

A. Well, the fact that you're comparing us to McKesson from that standpoint, and the fact that we would not have any suspicious orders.

Q. And I swear to you I'm not being sarcastic here. This is a genuine question.

Are -- is McKesson -- do you think the orders that McKesson has placed are hundreds of thousands of times greater than DDM's orders?

A. I know they're very large, so I -- I mean, we have none. I guess I'm missing that question.

Q. No. It's -- in other words -- you're saying the distinction is because McKesson is much larger --

A. Correct.

Q. -- than DDM?

And McKesson has hundreds of

thousands of suspicious orders that they've reported, correct?

A. Correct.

Q. And I'm wondering if McKesson is hundreds of thousands of times larger than DDM, at least in terms of orders placed, if that's -- in other words, does the ratio line up is what I'm trying to figure out.

A. I don't know because I --

MR. JOHNSON: Objection. You left out one factor. He also mentioned that we're delivering to our own stores and know our customer.

MR. HAWKINS: That's fine.

BY MR. HAWKINS:

Q. Please answer the question.

A. And, again, I don't know who their customer is. So when you talk about hundreds of thousands of suspicious orders, if you've got some bad actors in that system, okay, as customers, that number can go way up.

Q. And presumably when a suspicious order is placed, you say bad actor as a customer, that's probably not going to repeat

too often, right, because it's turned over to the DEA, and if there's a real problem there, that's presumably going to end the problem, right?

A. I don't know. I can't speak to what the DEA does.

Q. I see.

Let's go to 17 -- 18. I'm sorry. Mr. Mulligan is going to hand you what has been marked as Plaintiff's Exhibit 18.

- - -

(DDM-Ratycz Exhibit 18 marked.)

- - -

MR. HAWKINS: You know, just to expedite things, hand him 19 as well, please. And the Bates number are 11545 and 13519. In the interest of time, I'm going to refer to these two collectively.

- - -

(DDM-Ratycz Exhibit 19 marked.)

- - -

BY MR. HAWKINS:

Q. These are two e-mails. You're

involved in both -- I'm sorry. One is a letter and one is an e-mail.

A. I didn't read the letter yet. Do you want me to read the letter? I'm not sure.

Q. You're welcome to. I'm just going to ask you if you recollect the incident, so that's --

A. Okay.

MR. JOHNSON: These are two different incidents.

MR. HAWKINS: I understand that.

MR. JOHNSON: Okay.

A. Okay. I thought we were just -- I didn't read Exhibit 19.

Q. You're welcome to. I'm just going to ask you if you recall the incident.

A. I'd like to read it then.

Q. Whatever you'd like.

MR. JOHNSON: He's got to know what the incident is, I guess, right?

Q. Some might look at it and say, "Oh, yeah, I remember that as" --

A. Okay.

Q. All right. It's fair to say that

there have been some thefts occurring at DDM throughout the years, correct?

A. Yes.

Q. And that's really not surprising, right? I mean, as a store -- any time you have 74 stores, sooner or later you're going to encounter some bad apples and you're going to see that, right?

A. It can happen, yes.

Q. Okay. Do you recall -- there are three thefts referenced in these two exhibits, correct?

A. Three? I only saw two. I'm sorry.

MR. JOHNSON: You're going to have to maybe point that out to us.

THE WITNESS: Yeah.

Q. It references DDM 35, which I assume is a store, and then DDM 19, which I assume is a separate store.

A. Where is --

MR. JOHNSON: In which?

Q. Do you see the e-mail string -- look under September 10, 2013.

MR. JOHNSON: Yeah. Exhibit 18?

MR. HAWKINS: Yeah.

BY MR. HAWKINS:

Q. It's fair to say that represents two separate stores, right?

A. Yes.

Q. Okay. So we're talking about three thefts between these two documents, correct?

A. Correct.

Q. Now, the only thing that I find remarkable -- or not remarkable. The only thing I want to understand about these thefts is, remember your inventory system that we talked about? Do you have any knowledge, as you sit here today, why your inventory system was not able to pick that up -- pick them up, or maybe it did pick them up. I mean, do you -- I'd like to know how these thefts related to your inventory system's ability to detect the thefts.

MR. JOHNSON: Okay. And I'm going to object, only that -- one incident is in 2001, and other two are in 2013.

MR. HAWKINS: Correct.

MR. JOHNSON: And, I mean, that's a pretty big span of time between them.

MR. HAWKINS: So?

MR. JOHNSON: Well -- because you're asking him what's -- about the inventory system. I mean, over a 12-year period, it may be a different inventory system.

MR. HAWKINS: Well, that would be something the witness can explain, is that "We had a different inventory system in 2001, and it didn't detect the theft, and we changed it, and this is why" -- there could be a dozen explanations.

I just want to know from the witness why the inventory systems were not able to detect them. Or maybe it did. That's what I'm trying to figure out.

A. I'm sorry. Does it say what the amount was that was --

Q. The -- in the e-mail, the thefts actually looked somewhat -- pretty large. I

mean, granted, I don't know what a large -- but they reference, you know, significant amounts.

A. Okay.

Q. Obviously caught the attention of Buddy and, you know -- I'm sorry to use a first name, but the e-mail.

A. No. As far as the OxyContin -- I'll speak to that one -- at Store 35 first. Again, that's a Schedule II, so that's inventoried on a monthly basis. It should be done on a daily basis as well. I don't think we had cycle counts going at that time. But, you know, I -- it would have been caught at some particular point. I don't know the specifics of when. It looks like they caught him.

It could have -- I don't -- again, I don't know how much he stole here. Does it say? I don't see any reference. It's hard for me to talk about what our inventory is going to catch. And the key is when, you know, when it happened with regard to the actual pilferage is I guess -- is key to this.

Q. Maybe I can clear things up. I mean, what I'm hoping happened is these things

don't appear to happen too often as evidenced by the fact I'm using a 2001 and a 2013 event. So I imagine they're fairly significant events at DDM. Yeah?

A. Yes.

Q. And you're kind of involved in this stuff. It obviously makes -- so I'm hoping maybe -- if you don't, that's fine. It's perfectly -- you might remember the incidents and say "Aha. This was a theft back in '01. This was a theft in '13. This is -- we investigated, and this is what we found."

That's what I'm hoping for. Maybe -- maybe that's not the case, but --

A. I don't recall that much about them, other than I did recall the one about the -- just from a standpoint of the whole scenario of the person at Store 35 with the real bad heroin problem.

Q. Okay. And that was -- I mean, they -- I don't know how well you read the e-mail, but they seemed to capture a lot of drugs with him, correct?

A. Yes. I don't know if they were

all ours though. I don't -- you know, I'd have to look at the DEA 106.

Q. And then it references inventory count.

I'm sorry. I'm talking over you.

A. Yeah. I'd have to dig deeper into that. I don't recall that.

Q. Okay.

A. I recall the event. I don't recall the specifics as far as how the person -- the inventory piece on that, so ...

Q. You would agree with me, though, that is something the inventory count should eventually catch though, right?

A. Yes, unless -- and, again, that's why I brought up the issue of timing, because if it happens at a specific time of when right after a count was done, you know, then it's going to get caught. It's just not going to get caught right away.

The other piece could be was this an episode of where somebody is just shorting patients as the medication is being counted.

Now, in our stores, our

pharmacists count the C-IIs. We don't let the technicians do it. But in that example, you know, like in any other example, or any other pharmacy, a pharmacist may step out to help a patient, may step out to go to the restroom, and now if a patient -- potentially a technician is looking at a -- knows that there's a prescription there that's sitting there, she can take those and take some of those out and short a customer.

Q. Okay. So to the best of your knowledge, there are two possible explanations. One is timing, and the other is shorting --

A. There could be more. I'd have to give it some thought, so ...

Q. And I -- I'm not saying there aren't more, but I'm just saying to the best of your recollection right now, you thought of two possible explanations --

A. Yes.

Q. -- right?

A. Yes.

Q. One is -- well, we'll start with shorting patients. You seem to indicate that's

less likely, although possible, because pharmacists usually count the C-II prescriptions, right?

A. Yes. But, again, a pharmacist will step out and go to the restroom or help a patient. So there could be a situation where, you know, that -- yeah.

Q. All right. And, secondly, the timing, what's the longest period of time you think it could go without the inventory system being able to catch it? I understand you're saying, you know, depending on the time, it might take longer to catch them. What's the longest imaginable period of time it would take for that accounting system to catch such a problem?

A. On a Schedule II, it would be 30 days.

Q. 30 days?

A. Yeah.

Q. So if it's longer than 30 days, there's a problem somewhere?

A. There's a problem, yeah.

MR. HAWKINS: We're at 20? And

just for the record, we're getting close to the end.

THE WITNESS: Great.

- - -

(DDM-Ratycz Exhibit 20 marked.)

- - -

BY MR. HAWKINS:

Q. And you're welcome to read the whole bit. I'll just tell you right now I'm going to question you about item number 2 in the e-mail from you.

Oh, I'm sorry. We're at Bates number 8884.

A. Okay.

Q. So directing your attention to paragraph 2, you state, "I am not sure we want to give them" -- them being the DEA -- "reason to enter our stores."

Please explain why you don't want to give the DEA reason to enter your stores.

A. I -- that statement is said in a way that we don't want to do something wrong and have them come into our stores that way, so -- does that make sense? Do you see what I'm

saying?

Q. I see.

A. We don't want -- we want to make sure we -- I'm not sure we want to give them a reason in our stores. In other words, the way I view is that we wouldn't want to do something wrong.

Q. I see. And following that sentence, you then state, "Also, pharmacy supervisors continue to see problems with the manual logbooks, ranging from incompleteness and even situations with missing entries."

That doesn't have anything to do with the reason you don't want the DEA to enter your stores?

MR. JOHNSON: Objection.

A. That partly could be, yes.

Q. You think the DEA would have problems with logs of that nature?

MR. JOHNSON: Objection.

A. We were -- we were using a system, and the issue became that some of the drivers licenses -- if I recollect, this incidence was not being captured, which was leading to

incomplete purchases. So that led to us going ahead and moving these to the pharmacy is what we ended up doing.

So yes. Were there some issues with pseudoephedrine? Absolutely. I don't think anybody is denying that. And that's evident in the fact that we were getting some issues -- or complaints with the manual logbooks not being completed properly, and that's why we moved it to the pharmacy.

Q. Okay. So that's how you addressed the problem, is moving it to the pharmacy?

A. Yes.

Q. When did you address that problem?

A. I don't know. And based on this e-mail, I would think -- I couldn't tell you.

Q. So, I mean, it would have to be some --

A. Yeah. I wasn't involved in that process, so ...

Q. It would have to be sometime thereafter, because obviously if it were fixed, then you wouldn't have the concern over the logbooks, right?

A. I would think so, yeah.

- - -

(DDM-Ratycz Exhibit 21 marked.)

- - -

Q. Handing you what I hope will be the last exhibit, Plaintiff's Exhibit 21. It is DDM168903.

A. Okay.

Q. All right. Kind of like this earlier -- an earlier exhibit we talked about, you'd have no reason to dispute that there's several e-mails like this and several notifications like this, right?

A. Correct.

Q. And that would be consistent with the first sentence there, "I guess it's about that time of month," implying it happens regularly, right?

MR. JOHNSON: Objection.

A. It could be a situation where he's sending them all out for his other customers that he has.

Q. I see. Who is he?

A. That would be Brandon.

Q. Okay. In any event, you wouldn't doubt me if I told you I could produce several more like this?

A. I don't dispute that, no.

Q. Okay.

A. I'm just saying that -- when he says "it's about that time of month," I'm just saying something tells me he's probably sending others at that time of the month to other customers, and it wasn't necessarily a statement that was made about Discount Drug Mart. That's all.

Q. That's a fair characterization.

Describe what this is. What's being conveyed here?

A. It's an outlying order. And so what's happening here is the wholesaler is notifying us that we have a store that has exceeded its threshold for purchases, and the order is going to be cut. However, it does go on to say if there's been any change in the business model, you know, to let them know.

Q. Okay. When you see these e-mails, does it raise concern that this might be a

diversion here? I mean, when you see increases like that, it's being triggered -- that Cardinal's trip wire is being set off that this might be a diversion?

A. Yes. Yes, it could be.

Q. Okay. Tell me everything DDM has done to investigate to go forward to make sure that that's not the case?

A. So in this example, I think it goes back to speaking about knowing your customer. If I'm not mistaken, there was a network access issue by some of our competition in that area, one large chain, and business at that specific pharmacy grew. And I would suspect that that grew on controls and it grew on non-controls, just as a byproduct of that double digit growth.

Q. I see. Do you know if there -- okay. So you're recalling a specific instance here; are you not?

A. I think so, yes.

Q. Is there any documentation of that explanation like, "Okay. We've conducted an investigation, and we came up with that

explanation, and here it is."

Would I be able to find that in the records anywhere?

A. No.

Q. Why not?

A. Because, again, I think it's basically us looking at that and making that inference and that determination and knowing our customer, so ...

This is -- this is one of 1,000 stores, okay. I wouldn't be able to tell you much about Store 18. I could tell you where Store 18 is. I can tell you exactly -- not from that time period, but I could tell you what their business, like, is today. So if I got this order or this e-mail today, I'd be able to speak to the business model at hand as a reference right there.

At that particular point, I might make the determination that, yes, we're seeing new lives that we have access to that we didn't have before. It could be a variety of other reasons. Whatever those may be, they make the determination that, no, okay, I'm not going to

worry about that store at that particular point.

MR. HAWKINS: I see. All right.

Mr. Ratycz, if you could give me ten minutes, if that, I'd like to go over my notes with my colleague, and likely we're done, but not so long.

THE WITNESS: Sure.

MR. JOHNSON: Okay. We'll get up and stretch a little bit.

THE VIDEOGRAPHER: The time is now 1:26. Going off the record.

(Recess taken.)

THE VIDEOGRAPHER: Okay. The time is now 1:30. Back on the record.

BY MR. HAWKINS:

Q. Mr. Ratycz, we were talking about, you know, knowing your individual pharmacist and how that aids -- allegedly aids DDM's ability to determine whether diversions are taking place.

Is there any effort to make sure that the pharmacists act uniformly with respect to diversions?

MR. JOHNSON: Objection.

A. Yes.

Q. What is that effort?
A. I think part of that is our controlled substance quality assurance program. And even before that, you know, our procedure on theft reporting, okay, our requirement to -- for inventory counts and things along that line. So, I mean, there were processes in place, I think, to bring -- to make sure that there was consistent effort to thwart theft.
Q. Oh, theft reporting or diversion?
A. Yeah.
Q. Okay. So theft. How about with regard to problematic prescribers?
A. Yes, I think so.
Q. And how is that handled uniformly? What procedures are in place to make sure that's handled --
A. That was discussed at every single pharmacist meeting we ever had. And, again, it goes back to my original testimony where we had state board in, and state board every meeting, and we talked about that. And we talked about -- you know, we told our pharmacists if they never felt comfortable in filling a

prescription, they didn't have to. And our pharmacists were good at either reporting to us or reporting to the state board. And they worked with investigators many times.

Q. And earlier you indicated that pharmacists might be reluctant to fill a prescription that they otherwise would fulfill. Can you explain that again?

A. Say that again. I'm sorry.

Q. Yeah. Earlier when we had the break and, you know, I had a line of questioning I had -- and I forgot about it until you just said that -- you indicated that there are instances where pharmacists were reluctant to fill prescriptions. What are you referring to with that?

A. I think pharmacists in general are always reluctant to fill controlled substances. I just think that's the nature of the beast. I just think that's gotten that way, and it's even more so now. That's all. That's all I was trying to make in that comment.

MR. HAWKINS: Fair enough. I have no further questions unless there's

redirect.

MR. JOHNSON: I don't think so.

MR. HAWKINS: Thank you,

Mr. Ratycz. I appreciate your time.

THE VIDEOGRAPHER: The time is now

1:33. This concludes the deposition.

Going off the record.

(Signature not waived.)

- - -

Thereupon, at 1:33 p.m., on Friday,

December 21, 2018, the deposition was concluded.

- - -

CERTIFICATE

STATE OF OHIO :

SS:

COUNTY OF _____:

I, PETER RATYCZ, do hereby certify that I have read the foregoing transcript of my cross-examination given on December 21, 2018; that together with the correction page attached hereto noting changes in form or substance, if any, it is true and correct.

_____

PETER RATYCZ

I do hereby certify that the foregoing transcript of the cross-examination of PETER RATYCZ was submitted to the witness for reading and signing; that after he had stated to the undersigned Notary Public that he had read and examined his cross-examination, he signed the same in my presence on the _____ day of _____, 2018.

_____

NOTARY PUBLIC - STATE OF OHIO

My Commission Expires:

_____, _____.

CERTIFICATE

STATE OF OHIO :
SS:
COUNTY OF FRANKLIN :

I, Carol A. Kirk, a Registered Merit Reporter and Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named PETER RATYCZ was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the deposition then given by him was by me reduced to stenotype in the presence of said witness; that the foregoing is a true and correct transcript of the deposition so given by him; that the deposition was taken at the time and place in the caption specified and was completed without adjournment; and that I am in no way related to or employed by any attorney or party hereto or financially interested in the action; and I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Columbus, Ohio on this 27th day of December 2018.

_____
CAROL A. KIRK, RMR
NOTARY PUBLIC - STATE OF OHIO

My Commission Expires: April 9, 2022.

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DEPOSITION ERRATA SHEET

I, PETER RATYCZ, have read the transcript of my deposition taken on the 21st day of December 2018, or the same has been read to me. I request that the following changes be entered upon the record for the reasons so indicated. I have signed the signature page and authorize you to attach the same to the original transcript.

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